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COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Items 9, 11 and 17 (b) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Attacks on human rights defenders in Mexico

1. The Lawyers Committee for Human Rights is concerned about the harassment of, and restrictions placed on, human rights defenders in Mexico. In recent years the Mexican non-governmental movement has grown in size and become increasingly vocal in exposing human rights violations and proposing human rights reforms. The Lawyers Committee welcomes the government's efforts to enter into a dialogue with non-governmental organizations, however we are concerned at the Government's apparent reluctance to permit the non-governmental community to freely express their criticisms of government policies. There is evidence of government involvement in physical attacks and threats against human rights defenders, as well as malicious criminal prosecutions and legislative or administrative restrictions on the right to freedom of association of individuals and organizations concerned with human rights issues.

2. We welcome the visit of the High Commissioner for Human Rights to Mexico. We note her expression of concern regarding attacks on human rights defenders as well as the concerns of the Sub-Commission on the Promotion and Protection of Human Rights (Res 1998/4, August 20, 1998, E/CN.4/SUB.2/RES/1998/4).

3. We also welcome Mexico's acceptance of the jurisdiction of the Inter-American Court of Human Rights. However we note that Mexico has so far taken few concrete steps to implement a November 1999 order of the Court which required the Government to adopt protective measures regarding human rights lawyer, Digna Ochoa and other lawyers at her non-governmental organization, the Miguel Agustin Pro Juárez Human Rights Center (PRODH) (see below).

Physical attacks and malicious prosecutions directed at Mexican human rights defenders

4. The following two cases involve attacks on two prominent human rights lawyers, Digna Ochoa and Israel Ochoa. They are good illustrations of direct attacks on human rights defenders for three reasons: (i) they are well-documented; (ii) they indicate that State agents have been involved in attacks sustained over several years; and (iii) the connection between the attacks and the human rights activities of the two lawyers is apparent.

5. *Digna Ochoa and the PRODH.* On 9 August 1999, Digna Ochoa, legal director at the PRODH, was abducted for several hours. Shortly thereafter, the PRODH began to receive written death threats. Then, in October 1999, Ms. Ochoa was attacked in her Mexico City home and, in a 9-hour ordeal, she was rendered unconscious, blindfolded, tied up, threatened, harshly interrogated and pressured to sign a statement by at least two individuals. The attackers insistently questioned her on insurgent organizations in southern Mexico. After cutting her phone line, the attackers left Ms.

Ochoa near an opened natural gas valve, exposing her to the escaping gas. The next day, PRODH staff discovered that their offices had been broken into and ransacked; a death threat scrawled on a file was found among the debris.

6. These latest incidents are almost certainly related to the PRODH's human rights legal work. Ms. Ochoa and the PRODH have recently been involved in the defense of two environmental activists who were detained and unfairly charged with criminal offenses in the state of Guerrero. They are also representing several victims of human rights violations committed by the Mexican Army in Guerrero.

7. Furthermore, the nature of the interrogation and its focus on insurgent groups suggests that Government agents were involved. The Government has nonetheless failed to pursue an effective investigation to identify and prosecute the individuals responsible for these attacks.

8. This is not the first time that Digna Ochoa and the PRODH have been subjected to persecution, presumably perpetrated by State actors. Threats against the organization first began in 1995 when PRODH attorneys, including Digna Ochoa, agreed to represent individuals accused of participation in the Zapatista insurgency movement in criminal proceedings. The PRODH alleged, in those criminal cases, that the Judicial Police and prosecutorial authorities had tortured their clients and denied them their due process rights.

9. *Israel Ochoa.* Mr. Ochoa serves as criminal defense lawyer for more than 100 detainees from the Loxicha region of Oaxaca. He has denounced, in the context of criminal proceedings as well as more publicly, the human rights violations which State agents have committed against the Loxicha detainees, including the use of torture to obtain confessions. As a result of these allegations, the federal Office of the Attorney General (*Procuraduria General de la República*) opened a baseless criminal investigation against Mr. Ochoa allegedly for the crime of simultaneous representation of two parties to a lawsuit with competing interests. Although there were no facts supporting the charges, on June 25, 1999, a federal judge issued an arrest warrant against Mr. Ochoa. Fortunately another judge eventually annulled the arrest warrant and ordered the case to be closed on the grounds that the prosecution could not establish the elements of the crime. It appears however that these accusations were intended to deter Mr. Ochoa from defending these detainees.

10. In September 1996, federal agents abducted Mr. Ochoa in the state of Veracruz after a homicide occurred in a community receiving his legal services in relation to a land dispute. The warrantless arrest took place outside government offices while Mr. Ochoa was waiting to meet with officials about the land matter. After interrogating him and holding him incommunicado for several hours, federal agents handed him over to Veracruz state police and prosecutors who then re-interrogated and beat him before releasing him due to lack of evidence.

11. The Lawyers Committee urges Mexico to take concrete steps to guarantee the application of the UN "Declaration on Human Rights Defenders", in particular, Article 12, which requires States to protect human rights defenders and lawyers from violence. Furthermore, Principles 16 and 18 of the Basic Principles on the Role of Lawyers requires Governments to ensure that lawyers can perform all of their professional functions without intimidation, and that they shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Legal restrictions on the activities of Mexican human rights defenders

12. In addition to physical and prosecutorial hindrances employed by the Government, the work of human rights defenders is being restricted by legislation and administrative action. For example, the Government has abused its admittedly broad discretion in immigration matters, to expel foreigners who are invited by Mexican organizations to carry out human rights activities in Mexico. In many cases, the Government has invoked the Mexican constitutional prohibition on foreigners engaging in political activities, even though the Government has never defined what activities are considered to be political. Although some foreigners have succeeded in challenging the legality of the expulsion orders in Mexican courts, they have been deported before the outcome of the court proceeding. Even when the person is still in the country at the time of a court order in their favor, the government has, in some cases, proceeded with expulsion.

13. The Government has also imposed highly burdensome requirements on international human rights observers who wish to obtain visas to travel to Mexico. The 1998 special rules for obtaining an FM3 human rights observer visa significantly limit the possibility for successful human rights missions to Mexico, even where foreign delegations are invited by Mexican organizations. For example, they limit time in Mexico and the number of persons who may enter as a group. The Government has repeatedly announced its intent to modify these rules in order to comply with international standards, however no such changes have been made and no proposals have been circulated.

14. Finally, both state and federal legislative initiatives purport to regulate human rights and other non-governmental organizations in a manner which would severely restrict their right to freedom of association. Some of these laws, such as the 1995 Oaxaca associations law, compulsorily impose burdensome registration processes and extensive governmental supervision. While other proposed laws would establish voluntary registration, they also may provide the Government with the means to control non-governmental organizations by conditioning the exercise of basic rights on participation in the regime.

Recommendations

15. In light of the serious attacks on human rights defenders in Mexico, the Lawyers Committee for Human Rights urges the Commission on Human Rights to call upon the Mexican Government to:

(a) comply fully with the principles of international law set forth in the Declaration on Human Rights Defenders and the Basic Principles on the Role of Lawyers. Mexico should place particular emphasis on the investigation of attacks and threats against human rights defenders and lawyers and the prosecution of those responsible.

(b) cease deportations of foreign human rights observers on the grounds that they have engaged in "political activity" simply as a result of their human rights observation work. The Government should also revise the special rules for the FM3 visa for human rights observation in order to comply with international standards.

(c) refrain from adopting legislation which would effectively restrict the right of non-governmental organizations to exercise their freedom of association.

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CIVIL AND POLITICAL RIGHTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The situation of human rights in Northern Ireland

1. In April 1998 the Good Friday Agreement was signed, providing a framework for establishing peace and enabling the return to a normal society in Northern Ireland. The Agreement places a premium on human rights, establishing a Human Rights Commission, an Independent Commission on Policing for Northern Ireland and a Criminal Justice System Review. In addition, the Good Friday Agreement calls for the removal of emergency powers: "The British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with: ... (iii) the removal of emergency powers in Northern Ireland." (*The Good Friday Agreement*, April 1998, section Security, paragraph 3; http://www.nio.gov.uk/agr_links.htm).

2. Pursuant to the Good Friday Agreement, an Independent Commission on Policing for Northern Ireland, chaired by Chris Patten, was established in June, 1998 to address police reform. The Patten Commission published its report on September 9, 1999 making 175 recommendations for future policing in Northern Ireland (*A New Beginning: Policing in Northern Ireland*, Sept. 1999; http://www.belfast.org.uk/report.htm). In general, the Report is a positive and constructive contribution. It emphasizes the need for police accountability and a human rights-based approach to policing. It makes a number of substantive suggestions related to force reduction, diversity recruitment strategies, civil oversight of police operations, community policing and human rights training of officers.

3. The Lawyers Committee believes that the transformation of the Royal Ulster Constabulary (RUC), Northern Ireland's police force, is fundamental to the success of the peace process. (*Submission to the Commission on Policing for Northern Ireland*, Lawyers Committee for Human Rights, July, 1999; http://www.lchr.org/n.ireland/policing.htm). The Lawyers Committee urged the Commission to consider ways for the police force to develop a culture of professionalism, inclusion and accountability. It recommended steps to strengthen disciplinary measures for officers who abuse civilians, end the use of plastic bullets, repeal emergency laws, and improve recruitment practices to diversify the police force.

4. On January 19, 2000, the Rt. Hon. Peter Mandelson MP, Secretary of State for Northern Ireland, announced the Government's decision to implement virtually every major recommendation in the Patten Report. (*Statement of Decisions on the Patten Report*, 19 January 2000; http://www.britainusa.com/bis/nireland/19jan00.htm). The Lawyers Committee welcomes Mr. Mandelson's announcement and supports the Government's initiative to implement the Patten Commission's recommendations. We urge the UK Government to draft appropriate legislation, provide adequate funding, and appoint an experienced and credible oversight commissioner as soon as possible. All these measures will help determine the success of implementing the Patten recommendations.

5. The Lawyers Committee is concerned, however, that the Secretary of State did not satisfactorily address issues such as the need to repeal emergency legislation, strengthen accountability for policing and deal with allegations of past abuse by the RUC. There is a pressing need to address past violations, and since the Patten Report is "forward-looking" it does not offer specific guidance on how to break the existing cycle of impunity. Confronting a legacy of past abuse is necessary for building a strong foundation for the rule of law, the primary mechanism for ensuring Northern Ireland's compliance with its human rights obligations.

6. The Lawyers Committee continues to press for an independent inquiry into the murder of Patrick Finucane, the Belfast lawyer who was killed on February 12, 1989. Prior to his death, Mr. Finucane received death threats from members of the police which were communicated through his clients. His unresolved murder continues to have a chilling effect on other defense lawyers. On April 12, 1999, Dato' Param Cumaraswamy, Special Rapporteur on the Independence of Judges and Lawyers, reiterated his call for an independent inquiry into the circumstances of the Finucane murder, especially since "[f]rom the materials seen by the Special Rapporteur, there is at least *prima facie* evidence of such [State] collusion." (E/CN.4/1999/60).

7. In March, 1999, RUC Chief Constable Ronnie Flanagan appointed London Detective John Stevens to investigate the Finucane murder. This is Mr. Stevens' third investigation relating to the Finucane case. In June, 1999, William Stobie was arrested and charged with the murder. On October 5, 1999, Mr. Stobie was released on bail. During his bail hearing, Mr. Stobie revealed that he had been an RUC police informer at the time of the murder. At the hearing, his lawyer also revealed that in 1990 Mr. Stobie was interviewed for more than 40 hours by members of the RUC Special Branch. These interviews, which included Stobie's confession to the murder, were transcribed and have been available to the authorities since 1990. Among other things, these notes identify the names of the members of the RUC special branch who he had warned about the murder. Charges against Mr. Stobie are still pending.

8. Recent news reports indicate that on January 23, 2000, Mr. Stevens identified six members of the paramilitary Ulster Defence Association suspected of the murder of Mr. Finucane, and have sent the files to the Director of Public Prosecutions(DPP). According to the press reports, Mr. Stevens does not expect to submit a report about official collusion in this case to the UK Government until 2001, an undue delay.

9. On March 15, 1999, Rosemary Nelson, another Northern Ireland defense lawyer, was killed by a car bomb. Like Finucane, prior to her murder Mrs. Nelson received numerous death threats, some of them from the police communicated through her clients. On April 12, 1999, Mr. Cumaraswamy expressed his "lack of confidence in the RUC investigation mechanism" in connection with the Independent Commission for Police Complaints (ICPC) report regarding formal complaints she had made. In January, 2000, the DPP declined to prosecute the RUC officers accused of threatening Rosemary Nelson. The DPP said that it lacked

sufficient evidence to initiate criminal proceedings. Prior to her murder, Ms. Nelson was denied official protection despite repeated requests and clear evidence that her safety was at risk (Lawyers Committee, Action Update Rosemary Nelson (Dec. 1999)(http://www.lchr.org/121/nelson1299.htm)).

10. On March 30, 1999 RUC Chief Constable Ronnie Flanagan announced the appointment of Mr. Colin Port, the Deputy Chief Constable of the Norfolk Constabulary in England, as Officer in Overall Command of the Nelson murder investigation. This investigation in Northern Ireland is based in the Lurgen RUC station and relies on the cooperation of RUC officers. As of this date, no one has been arrested in connection with Ms. Nelson's murder. On December 10, 1999, the Lawyers Committee joined other human rights organizations calling for an independent inquiry into the Nelson murder (http://www.lchr.org/n.ireland/nijoint.htm).

11. The Lawyers Committee also reiterates its deep concern with the continuing intimidation and harassment of other defense lawyers in Northern Ireland. During a mission to Northern Ireland in November 1999, the Lawyers Committee learned that other defense lawyers continue to receive threats linked to their representing clients in security-related cases. We share Mr. Cumaraswamy's conclusion that the murders of Mr. Finucane and Ms. Nelson have "had a chilling effect on the independence of defense lawyers and other human rights defenders in Northern Ireland." (Press Release HR/CN/908, 13 April 1999). The future credibility of the police in Northern Ireland depends upon a full and thorough investigation in both the Finucane and Nelson cases, public disclosure of the results, and accountability for those responsible.

12. The Lawyers Committee welcomes the naming of a new Police Ombudsman Ms. Nuala O'Loan and hopes that she has the power to independently investigate all complaints against the police including those in connection with the Finucane and Nelson cases. The Lawyers Committee also welcomes the creation of the new Northern Ireland Human Rights Commission, chaired by Mr. Brice Dickson. We are concerned, however, that neither entity has been given sufficient funds to effectively carry out its respective mandate (3 million pounds annually for the Ombudsman's office and 750,000 pounds annually for the Commission). Furthermore, we are concerned that the Human Rights Commission continues to lack adequate subpoena power or access to relevant DPP files.

13. The Lawyers Committee also reiterates its call on U.K. authorities to repeal emergency laws. The peace process initiated by the Good Friday Agreement minimizes all threats "to the life of the nation" and the United Kingdom is no longer justified in its derogation from article 9(3) of the International Covenant on Civil and Political Rights. As the Lawyers Committee noted in our submission to the 55th Session of this Commission, "the maintenance of emergency legislation inevitably will continue to create conditions leading to [human rights]

violations. Effective safeguards at pre-trial and trial stages help to prevent circumstances of torture and other cruel treatment. Such due process rights continue to be abrogated under the current emergency legislation regime in Northern Ireland." (E/CN.4/1999/NGO/66 4 March 1999, para. 3).

14. Finally, the Lawyers Committee welcomes the closing of the Castlereagh detention center as well as the introduction of video and audio equipment in the remaining interrogation centers. However, the continued use of "Diplock Courts" and special arrest and detention powers undermines the process of building confidence in the legal order in Northern Ireland and preventing human rights violations.

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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 March 2000]

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Protecting human rights defenders
Implementation of the "Declaration on Human Rights Defenders"

1. The Lawyers Committee for Human Rights welcomes the adoption of the Declaration on Human Rights Defenders, adopted by the General Assembly in resolution 53/144 of 9 December 1998 under the formal name "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms." By recognizing the role that human rights defenders have in the protection and promotion of civil, political, economic, social and cultural rights and by seeking to protect the personal safety and promote the activities of those human rights defenders, the Declaration operates as a vital tool for the realization of the norms embodied in the International Bill of Human Rights.

2. Despite the adoption of the Declaration on Human Rights Defenders, many defenders continue to be subjected to actual and threatened physical violence and malicious prosecutions. Further, their activities are suppressed by restrictive legal regimes. The following paragraphs give an example of each of these three types of harassment and highlight the need for immediate and effective implementation of the Declaration.

Physical violence against human rights defenders

3. In Guatemala, human rights defenders calling for an exhaustive investigation and prosecution of those responsible for the 1990 murder of Guatemalan anthropologist Myrna Mack, and the 1998 murder of Bishop Juan Gerardi have been targeted. Both Myrna Mack and Bishop Gerardi are believed to have been murdered by government officials because of their human rights activities. Now the people seeking to try their murderers are being threatened with death. In March 1999, Judge Henry Monroy, who in January had ordered three senior military officials to stand trial for the murder of Myrna Mack and who was the second judge on the Gerardi murder case, received a mock package bomb from an unknown sender, preceded by a warning from an anonymous caller. Judge Monroy fled to Canada because of these threats. The second prosecutor on the Gerardi case, Celvin Galindo, after beginning to explore previously ignored leads pointing to military involvement in the murder, was the object of surveillance and death threats. He resigned and fled the country in October. In April 1999, a stone wrapped in a plastic bag was left outside the doors of a church where Helen Mack, Myrna Mack's sister, was attending her father's funeral mass. Local human rights monitors believe the act was an attempt to intimidate her. This stone was believed to be intentionally reminiscent of the stone used in the murder of Bishop Gerardi. While there appears to have been positive movement in the investigation of the Gerardi case in recent months, the safety of the human rights activists and lawyers involved in the case remains a serious concern.

Malicious prosecution of human rights defenders

4. On December 10, 1999, a Serbian court sentenced Dr. Flora Brovina, pediatrician and founder of the Albanian League of Women in Kosovo, to 12 years in prison on charges of terrorism committed during the NATO air campaign in Kosovo. Brovina was arrested in late April 1999 in Kosovo and accused of aiding the separatist guerrilla movement, the Kosovo Liberation Army. For two months, Dr. Brovina was moved from house to house and her family was denied information on her whereabouts. She was interrogated for approximately 226 hours in the absence of a lawyer and she was denied medical treatment for an angina condition. In June, when the bombing ceased and NATO forces withdrew from Kosovo, she was transferred to a Serbian jail (with approximately 2,000 other prisoners). Her conviction came after prosecutors changed the charges against her mid-trial in order to increase the maximum detention period and introduce a confession that she argued was coerced. Independent trial observers noted that the prosecution produced no credible evidence against her.

5. This example, and the examples in Guatemala, illustrate the need for the immediate and effective implementation of the Declaration on Human Rights Defenders, in particular, Article 12(2) which requires States to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the...Declaration."

Repression of human rights defenders through national law

6. National laws and regulations frequently infringe upon the right to freedom of association of human rights defenders by imposing onerous or arbitrary registration procedures or discriminatory restrictions on the right to obtain funding for human rights activities. Other forms of legal restriction include denial of freedom of movement and assembly, and crippling limitations on human rights publications.

7. The Egyptian Organization for Human Rights has been operating under difficult conditions for many years. Since its establishment in 1985 the organization has been unable to obtain official registration and has continued to operate "in formation". In May 1999 a new and restrictive NGO law was passed. The law provides a set of criminal penalties, including a maximum sentence of one year imprisonment, for offenses that might amount to no more than the exercise of freedom of association; it gives authorities the power to interfere in the internal governance of organizations; it prohibits funding from foreign institutions without the prior approval of the authorities; and it limits the scope of permitted activities of NGOs.

8. These types of restrictions are irreconcilable with the right to freedom of association embodied in the ICCPR, and in the Declaration on Human Rights Defenders which affirms that everyone has the right to promote and protect human rights, "individually

and in association with others." States have a duty to provide an enabling environment for the exercise of these rights.

Effective implementation of the Declaration on Human Rights Defenders

9. In order to achieve effective implementation of the Declaration on Human Rights Defenders, the Lawyers Committee recommends the following to the key actors in the implementation process:

(a) States. All Members of the United Nations have committed themselves to uphold their obligations under the Declaration and effectively guarantee the rights of all human rights defenders in their territory. States should take all measures necessary to ensure the full protection of human rights defenders. In particular, national legislation incompatible with the Declaration should be reviewed and, where necessary, new laws protecting and enabling the work of human rights defenders should be adopted. States should also take action against those who threaten the personal safety of human rights defenders. States should make the Declaration widely available to everyone, particularly those involved in human rights activities, and undertake its translation into all national languages;

(b) Human Rights Defenders. Individuals, groups and organizations should use the Declaration as a protective tool and press their Governments to fully guarantee all rights and freedoms of human rights defenders in law and in practice. Violations of the rights of the Declaration should be reported immediately to national and international human rights monitoring bodies;

(c) Commission on Human Rights. The Commission should recommend that the Secretary-General appoint a Special Representative charged with the implementation of the Declaration on Human Rights Defenders. The Special Representative's mandate should include the ability to: (i) receive allegations of attacks on the rights of human rights defenders; (ii) respond effectively to such allegations – including by urgent action procedures and country visits upon invitation; (iii) examine measures, practices and laws that enhance or impede the work of human rights defenders; (iv) establish co-operation, conduct dialogue and recommend strategies to governments regarding the effective implementation of the Declaration; and (v) consult with and advise the appropriate UN agencies, organizations and programs regarding effective strategies for the protection of human rights defenders. The Commission should call on the Secretary-General to request all UN agencies, organizations and programs to co-operate and consult with the Special Representative, especially in the provision of technical and advisory services. All special rapporteurs and working groups should continue to report on abuses of human rights defenders falling within their mandates;

(d) High Commissioner for Human Rights. The High Commissioner for Human Rights should ensure a wide dissemination of the Declaration on Human Rights Defenders to all UN agencies, as well as among experts of the human

rights field offices, treaty bodies, special rapporteurs and working groups. The High Commissioner is also encouraged to provide support to a newly-appointed Special Representative and to special rapporteurs, working groups and independent experts seeking to incorporate the protection of human rights defenders in their mandates;

(e) Treaty Bodies. Treaty bodies should give more prominent attention to the valuable role of human rights defenders in the domestic implementation of treaty standards, and their need for better protection. Experts should more systematically inquire about the ability of human rights defenders to conduct their work in the States under review, preferably at the beginning of their dialogue with each State. Treaty bodies should inquire about the actions of State parties to bring national legislation that is relevant to the implementation of the Declaration into accord with their international treaty obligations.

10. For more information on the Declaration, see the Lawyers Committee's report "Protecting Human Rights Defenders: Analysis of the newly adopted Declaration on Human Rights Defenders" (http://www.lchr.org/media/chr/defdecanalysis.htm).

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CIVIL AND POLITICAL RIGHTS

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

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Justice in Malaysia:
the Case of the Special Rapporteur on the Independence of Judges and Lawyers; and the Prosecution of the Political Opposition, Lawyers and Journalists

1. The Lawyers Committee for Human Rights remains concerned about the administration of justice in Malaysia. For over ten years, the Lawyers Committee has observed a consistent deterioration in the rule of law. Beginning in 1988, the government replaced many independent-minded judges with those aligned with the ruling coalition, eroding fairness in the courts. Today, the government and several powerful members of the judiciary are attacking lawyers, journalists, and others willing to represent politically unpopular defendants and speak out about human rights. The results of this campaign are seen in two groups of recent cases. First, the handling of the defamation cases against Dato' Param Cumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers. Second, the criminal charges brought against several lawyers and a journalist for activities within their professional duties, and a political dissident. The two groups are dealt with in turn.

Defamation suits against Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers

2. In August 1995, Dato' Param Cumaraswamy announced that he would investigate allegations of corruption in the Malaysian judiciary. In November 1995 a London-based magazine, *International Commercial Litigation*, published comments by the Special Rapporteur regarding complaints that certain business entities were able to manipulate the Malaysian courts. As a result of these comments, four civil defamation suits claiming some US$100 million in damages were brought by private corporations against Mr. Cumaraswamy. The United Nations Secretary-General certified as to Mr. Cumaraswamy's immunity from these actions pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations ("the Convention"), however the Malaysian courts refused to enforce the Secretary-General's certificate.

3. A difference arose between the Malaysian government and the Secretary-General and the matter was referred to the International Court of Justice ("ICJ") by ECOSOC decision 1998/297 on August 5, 1998. In its near-unanimous advisory opinion of April 29, 1999, the ICJ determined that Malaysia had breached its obligations under the Convention by failing to transmit the Secretary-General's certificate of immunity to the competent Malaysian courts. The ICJ held that the Malaysian government should "communicate [the] advisory opinion to the competent Malaysian courts, *in order that Malaysia's international obligations be given effect and Mr. Cumaraswamy's immunity be respected*" (emphasis added).

4. On July 30, 1999 ECOSOC passed resolution 1999/64 calling on Malaysia "to make further efforts, in order that its international obligations . . . be given effect and Dato' Param Cumaraswamy's immunity be respected." Furthermore, in a letter to the President of ECOSOC on 19 October 1999 (E/1999/121), the UN Secretary-General reiterated Malaysia's obligation to accord Mr. Cumaraswamy immunity. To date the Malaysian courts have refused to implement the ICJ opinion and Mr. Cumaraswamy's claims for immunity continue to be denied. Furthermore, in Prime Minister Mahathir Mohamed's address to the General Assembly on September 29, 1999 (A/54/PV.16), he accused the

United Nations of choosing a biased and unqualified expert in Mr. Param Cumaraswamy, and criticized the UN and the treaty system of immunity.

5. Malaysia's failure to implement the opinion of the ICJ despite express agreement to be bound by the decision; the government's dismissal of calls from ECOSOC to implement the decision; and the recent statement of the Prime Minister of Malaysia to the General Assembly indicate a certain disrespect for the authority of the ICJ, international treaty obligations and the United Nations organs. Specifically, Malaysia's failure to ensure a Special Rapporteur's immunity from legal action while carrying out his mandate weakens the role of Special Rapporteurs, other UN experts and the United Nations machinery for the implementation of human rights.

6. Furthermore, as highlighted in the Secretary General's letter to ECOSOC on December 15, 1999 (E/1999/124), Malaysia's failure to accord Mr. Cumaraswamy his legal immunity creates a considerable tax on the United Nations which is obliged to indemnify Mr Cumaraswamy, as a UN expert, for damages and costs he incurs. So far the United Nations has paid US$110,886.91 in legal expenses on behalf of Mr. Cumaraswamy. Although the United Nations has submitted a claim for reimbursement of those costs to the Malaysian Government no payments have been received. As proceedings continue the legal costs will rise and should Malaysia's courts award damages against Mr. Cumaraswamy, the United Nations may be liable for enormous sums.

Criminal Prosecution of the Political Opposition, Lawyers and Journalists

7. Not only are political opposition figures at risk, but so are the lawyers that defend them and the journalists who report about their treatment before the courts. In recent cases, Malaysian judges have imposed punitive jail sentences on lawyers, journalists, and political dissidents in a series of questionable prosecutions. The cases described below reveal a pattern that transcends characterization as isolated attacks on disfavored individuals. The Malaysian justice system has started to employ a self-protection mechanism that raises serious questions about its independence from the ruling government.

8. *Anwar Ibrahim*: The former Deputy Prime Minister and political rival of Mahathir was deposed from office and charged with multiple counts of official corruption and sodomy. He was convicted in April 1999 of corruption, in a trial, marked by numerous procedural irregularities, that drew international condemnation. He is currently being tried for sodomy, although the trial was suspended during the recent national elections in Malaysia, seemingly to silence Mr. Anwar and remove him from public view during the election period.

9. *Zainur Zakaria*: A member of Mr. Anwar's legal defense team, Mr. Zainur was convicted of contempt of court and sentenced to prison in November 1998 after submitting a motion, backed by evidence, charging that prosecutors sought to fabricate testimony. The contempt sanction was imposed without addressing the merits of Mr. Zainur's motion or his proffered evidence. An appeal is pending and the sentence has been suspended in the interim period.

10. *Karpal Singh*: In January 2000 another member of Anwar's defense team, lawyer Karpal Singh, was arrested on allegations of sedition. Karpal's arrest was based on comments he made in court suggesting that his client may have been poisoned while detained in prison.

Like the comments of Zainur Zakaria (above), these comments were a legitimate element of a defense strategy in the case against Anwar. By charging Mr Karpal with sedition as a result of those comments the Malaysian court is infringing Anwar's right to a vigorous defense and Mr Karpal's obligation to provide those rights.

11. *Tommy Thomas*: Like Mr. Cumaraswamy, lawyer Tommy Thomas was sued for comments about corruption in commercial litigation. Fearful of litigation in Malaysian courts, his insurer insisted on settling the case. When Thomas made an out of court statement that he had not been consulted adequately about the decision to settle, a court held him in contempt and sentenced him to six months in prison.

12. *Murray Hiebert*: Mr. Hiebert, a journalist for the *Far Eastern Economic Review*, was convicted of contempt and sentenced to six weeks jail for "scandalising the court" after publishing an article noting the swiftness a case involving a politically connected plaintiff moved through the courts. Rather than face a lengthy appeal, he spent a month in prison.

13. The misuse of legal process to punish lawyers for their representation of unpopular clients is strictly prohibited by international law. Paragraphs 16, 17, 18 and 20 of the United Nations Basic Principles on the Role of Lawyers prohibit prosecution and other sanctions for actions taken by lawyers in accordance with their professional duties and the United Nations Principles on the Independence of the Judiciary emphasize the importance of a fair and impartial legal process. Both these instruments reinforce and supplement the fundamental human rights of freedom of speech and the right to a fair trial guaranteed by Articles 10, 11 and 19 of the Universal Declaration of Human Rights and Articles 14 and 19 of the International Covenant on Civil and Political Rights.

14. The Lawyers Committee has reported on these disturbing trends with the publication of two reports: *Justice on Trial: Malaysia's Assault on Lawyers* (1999) (www.lchr.org/feature/malaysia/JusticeOnTrial.htm) and *Malaysia: Assault on the Judiciary* (1989) (www.lchr.org/feature/malaysia/AssaultOnJudiciary.htm).

Recommendations

15. The Lawyers Committee calls upon the Commission on Human Rights to urge the Malaysian Government to implement the April 29, 1999 Opinion of the International Court of Justice in order to ensure Dato' Param Cumaraswamy's immunity from the four defamation actions currently pending against him.

16. The Lawyers Committee further calls upon the Commission on Human Rights to urge Malaysia to protect and promote civil and political rights, in particular the right to a fair and impartial hearing and the right to freedom of expression.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.00-11559

Violations of human rights in Turkey

1. The Lawyers Committee for Human Rights remains concerned about the continuation of human rights violations in Turkey. Nevertheless, the Lawyers Committee has been encouraged by the Ecevit government's repeated commitment to improve Turkey's human rights performance, and by legal reform measures that it has enacted during its year in office. For example, the military judge has been abolished from the panel in State Security Courts, and a new Law on Civil Servants, which replaces the 1913 Law on the Procedures for the Investigation of Civil Servants, should limit delays in prosecuting members of the security forces accused of involvement in torture and other gross violations of human rights. We welcome both of these measures.

2. We also welcome the government's pledge to reform the Penal Code comprehensively which will include the revision of provisions such as Article 312, which has been used to prosecute non-violent expressions of a political or religious nature. Furthermore, we appreciate efforts by high-ranking state representatives, like the President of Turkey and the Minister for Human Rights, who have consulted local human rights groups on different occasions. The Lawyers Committee also welcomes the visit of the Special Rapporteur on Religious Intolerance to Turkey.

3. Nevertheless, severe human rights problems remain in Turkey and essential measures to curtail widespread violations of human rights have not been implemented by the Government. Safeguards against torture for detained criminal suspects are insufficient; human rights advocates, lawyers and intellectuals continue to be prosecuted and imprisoned for the non-violent expression of their views critical of government policy; and, procedures for holding accountable members of the security forces involved in gross violations of human rights, such as torture or extra-judicial killing, are deficient, fostering a climate of impunity in which violations multiply.

Impunity

4. In several ongoing cases in which members of the security forces are facing charges for involvement in torture or extra-judicial killings, there appears to be a pervasive reluctance to hold members of the security forces accountable for violations they may commit. For instance, in the Manisa Case, in which 10 police officers have been accused of torturing a group of 16 young people in the town of Manisa in December 1995, those officers remain on active duty, in a position to intimidate their accusers and witnesses in the case, and to torture other detainees.

5. Although the new Law on Civil Servants eases some of the administrative hurdles to the prosecution of members of the security forces, in practice the implementation of the law remains dependent on a system in which prosecutors are constrained in their ability to launch a prosecution, and in which the security forces can too easily shield themselves from accountability. There is an urgent need for changes in official attitudes about holding members of the security forces accountable for involvement in human rights violations. In addition, laws must be further revised to comply with

Turkey's obligations as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other binding international instruments.

The persecution of human rights advocates and lawyers

6. The criminal prosecution of human rights advocates for their statements about the human rights situation in Turkey continues; this is facilitated by an atmosphere in which the promotion and protection of human rights is too often seen as a subversive activity. Turkey should undertake to fully implement the "Declaration on Human Rights Defenders" adopted by the General Assembly, which, in Article 1, reiterates the obligation of States to protect and facilitate the work of human rights defenders and affirms that "everyone has the right, individually and in association with others, to promote and strive for the protection of human rights and fundamental freedoms at the national and international level".

7. The cases brought against four human rights activists who are staff and volunteers for the Izmir branch of Human Rights Foundation of Turkey (HRFT) illustrate a systematic persecution of human rights activists working on cases in which members of security forces are accused of gross human rights violations, and which expose the state's involvement in human rights violations. Dr Zeki Uzun, a gynecologist who volunteers his medical services to HRFT is accused of giving support to a terrorist organization for providing medical treatment to two patients who were accused of terrorist offenses. HRFT staff members Gunseli Kaya and Dr. Alp Ayan were detained after attending the funeral of a prisoner killed during serious disturbances in Ankara Prison in September 1999. They were released after their first hearing, which took place on 20 January 2000, but continue to face trial on charges of supporting a proscribed organization. Dr. Veli Lok, a leading figure in the international movement for the treatment of torture, and HRFT's Izmir representative, made remarks during an interview which implied that authorities were targeting activists in Izmir because of the national and international concern over the Manisa case (see above). As a result, Dr. Lok is now facing criminal charges under the press law. The Turkish Government should desist from the prosecution of those who expose State involvement in human rights violations.

8. Although high rank officials, including the President, have met with representatives of human rights organizations, the branch offices of these same organizations are prohibited from operating. For example, the Diyarbakir branch of the Human Rights Association remains closed by administrative order since May 1997 while the case brought against it for alleged violations of the law on associations remains unresolved, The Urfa branch of the Organization of Human Rights and Solidarity for Oppressed People (Mazlum Der) also remains closed by administrative order. The Turkish Government should rescind the closure orders against branches of non-governmental human rights organizations.

9. Lawyers who represent political cases before State Security Courts are also subjected to official pressure, including threats, harassment and even prosecution on apparently fabricated charges. The case against 25 lawyers from Diyarbakir who have represented politically unpopular clients, is the most prominent current example of this problem. Dating from 1993, the charges for allegedly giving support to a terrorist organization against these 25 do not stand up to scrutiny and should be dismissed. Furthermore, many of these 25 lawyers were tortured and forced to sign inculpatory statements during pre-trial detention,

State Security Court procedures

10. In these special courts, the protracted period of pre-trial detention permitted under the law and the consequent delay in the detainee's access to counsel violates international standards. As many prosecutions in State security cases are based on statements taken from the accused during this pre-trial period, access to counsel at this time is particularly important. Incommunicado detention also increases a detainee's vulnerability to torture.

Recommendations

11. The Lawyers Committee for Human Rights calls on the Commission on Human Rights to recommend the abolition of exceptional courts and the unification of the penal courts; pending that, procedures in State Security Courts should be brought into line with prevailing norms in international human rights law which require that all persons arrested or detained "shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention" (see Principle 7 of the UN Basic Principles on the Role of Lawyers).

12. The Lawyers Committee calls on the Commission on Human Rights to urge Turkey to implement fully the recommendations issued by the Commission's Special Rapporteur on torture after his visit to the country in 1998 (UN doc. E/CN.4/1998/38). The Lawyers Committee also urges Turkey to extend an invitation to the Special Rapporteur on the independence of judges and lawyers, who has repeatedly indicated his interest in conducting a mission to Turkey.

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CIVIL AND POLITICAL RIGHTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Retaliation against lawyers who support human rights

1. The Lawyers Committee for Human Rights is deeply concerned about the harassment and abuse of lawyers whose work as practising attorneys supports basic human rights. Though international instruments like the UN Basic Principles on the Role of Lawyers ("Basic Principles") and the Declaration on Human Rights Defenders ("the Defenders Declaration") are designed to protect human rights lawyers from abuse, in practice they often face restrictions, prosecution, or outright violence in retaliation for their work. Whether direct or indirect, physical or "legal", such measures threaten not only the work of individuals but also the integrity of important institutions, and by extension, the societies to which they belong.

2. Out of the many cases of violations against human rights lawyers that the Lawyers Committee for Human Rights encounters each year, those that follow are merely representative of a much larger pattern of abuse.

Physical violence against human rights lawyers

3. In March 1999, a lawyer in Northern Ireland, Rosemary Nelson, died as a result of a car bomb blast outside her home. Nelson was one of a small number of defense lawyers in Northern Ireland who represented politically active clients. After ten months of investigation, nobody has been charged regarding Rosemary Nelson's murder. Despite recommendations by Param Cumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers, and an ongoing campaign by national and international organizations that informed the authorities of the continuing threats against Nelson, no governmental protection was ever provided to Nelson.

4. In October 1999, Digna Ochoa, head of the legal division of the Miguel Agustín Pro Juárez Center for Human Rights (PRODH) was attacked in her home. In a 9-hour ordeal Ochoa was rendered unconscious, blindfolded, tied up, threatened, harshly interrogated and pressured to sign a statement by at least two individuals. They insistently questioned her on insurgent organizations in southern Mexico. After cutting her phone line, the attackers left Ochoa near an opened natural gas valve. The next day staff discovered that the PRODH offices had been broken into and ransacked; a death threat scrawled on a file folder was found among the debris. These types of attacks have been intensifying since early August 1999. In November 1999 the Inter-American Court of Human Rights ordered Mexico to take all measures necessary to protect the life and safety of Ochoa and the PRODH staff. The Lawyers Committee calls upon the Commission on Human Rights to make similar recommendations.

5. In December 1999, Teki Bokshi, a Kosovar lawyer representing Albanian political prisoners detained in Serbia, was abducted by several men who approached him in a car bearing license plates from the Serbian Interior Ministry. He was travelling from Kosovo to Serbia to visit his clients. During two weeks of incommunicado detention

he was kept on the floor of a bathroom and fed every other day. The police claimed to have no knowledge of his arrest or whereabouts and made no attempt to investigate. Bokshi was released only after a private attorney arranged for his family to pay a ransom.

6. Protecting human rights lawyers from physical abuse is secured explicitly by paragraph 17 of the Basic Principles and article 12 of the Defenders Declaration. These requirements echo basic international norms protecting all individuals from arbitrary violence, torture or other abuse. The international community should not countenance such acts by any State against any person, nor should it tolerate a State's failure to protect lawyers from such behavior by non-State actors.

Criminal and civil lawsuits as a tool for punishing human rights lawyers.

7. In Malaysia lawyers have suffered retaliation at the hands of the judiciary for their attempts to vigorously defend their clients. In January 2000, lawyer Karpal Singh was arrested on allegations of sedition. Karpal has been representing former Deputy Prime Minister Anwar Ibrahim in a trial on sodomy charges. Karpal's arrest was based on comments he made in court suggesting that his client, whose blood arsenic level had risen dangerously, may have been poisoned in detention. This is not the first time Malaysia has attempted to punish a lawyer for critical comments in a legal proceeding. Another Anwar lawyer, Zainur Zakaria, was convicted in November 1998 for criminal contempt after filing papers, backed by evidence, alleging that prosecutors tried to fabricate evidence against Anwar.

8. Even international officials may face retribution for their official acts in Malaysia. Malaysia persists in denying Param Cumaraswamy, UN Special Rapporteur on the independence of judges and lawyers, immunity from legal action, as required by international law. Cumaraswamy is being sued for libel based upon comments made during his UN investigation into the ability of private interests to manipulate the Malaysian legal system. The Malaysian government has chosen to ignore the International Court of Justice opinion which states that Cumaraswamy is entitled to immunity. Cumaraswamy has accordingly been forced to halt his investigations into the Malaysian judiciary.

9. For over 6 years, Turkish officials have pursued charges against 25 lawyers from Diyarbakir alleging that the attorneys have abetted a terrorist organization. The weak and contradictory nature of the evidence presented against the lawyers suggests that the charges were motivated by their support for local human rights organizations and representation of unpopular defendants. Each faces up to seven years' imprisonment if convicted. In the meantime they are being subjected to a lengthy, obstructive process.

10. The misuse of legal process to punish lawyers for their representation of unpopular clients and support for human rights is strictly prohibited by paragraphs 16, 17, 18 and 20 of the Basic Principles which forbid prosecution for actions taken by lawyers in accordance with their professional duties. Similarly, the Defenders Declaration

requires States to protect those who promote human rights from criminal sanction regarding those activities. These requirements are intended to support the fundamental right to fair use of criminal process. Punishing lawyers in retaliation for internationally protected activity clearly violates these norms.

Professional restrictions: disqualification from legal practice and other hindrances on public advocacy

11. In Djibouti, lawyer Aref Mohamed Aref has openly criticized the government. He is the only lawyer in Djibouti willing to represent politically unpopular clients. In February 1999 Aref was convicted and imprisoned by a deeply flawed legal process on charges of attempted fraud that appear to have been fabricated by the authorities. Contrary to local law, the appeals court suspended Aref from legal practice for 5 years. The authorities also confiscated his Djibouti and French passports.

12. Belarus lawyer, Oleg Volcheck, has been arrested and severely beaten by police officers in connection with a demonstration to demand the resignation of President Lukashenko. He has faced administrative charges for his membership in the Central Election Commission which organized the opposition-led Presidential elections and has been warned that should he be found guilty of any further administrative charges he will be disqualified from legal practice.

13. Volchek is also the director of the Public Legal Aid Association: one of the few organizations in Belarus that offers free legal assistance to victims of human rights abuses and political dissidents. In November 1999 the Belarus government suspended the Association's license on what appears to be spurious grounds. The poor and the political opposition now have little recourse to lawyers.

14. When lawyers like Volchek and Aref speak about human rights, their comments are specifically protected by international law, including paragraph 23 of the Basic Principles. Furthermore, the right to promote human rights by speech and association is protected by articles 1, 5 and 6 of the Defenders Declaration which elaborate the fundamental right to free speech and association guaranteed by articles 19 and 22 of the International Covenant on Civil and Political Rights ("ICCPR"), and articles 19 and 20 of the Universal Declaration of Human Rights. When lawyers face professional restrictions because of their human rights activities, these long-standing international rights are violated.

Conclusion

15. These examples highlight the ways that States manipulate presumptively legitimate administrative and legal mechanisms and resort to physical abuse in order to retaliate against human rights lawyers. While such abuse is not unique to lawyers, the examples above suggest two conclusions regarding lawyer-specific human rights violations. First, such abuses are particularly troubling because their effects are felt by both the lawyer and client. Second, harassment of lawyers has the effect of forcing

those lawyers to choose between support for human rights and the practice of law. The ICCPR lists legal rights which not only specifically include the right to access a lawyer, but more generally require a lawyer for their assertion Furthermore, as the Basic Principles and the Defenders Declaration make clear, lawyers are entitled and encouraged to promote the rule of law and incorporate human rights principles into their practice; they should not suffer retribution for doing so.

16. The Lawyers Committee calls upon the Commission on Human Rights to support efforts to strengthen the protection of human rights lawyers in international law. The Commission should highlight the unique role that lawyers play in the promotion and protection of human rights and strongly condemn retaliatory sanctions against them.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by Centre Europe Tiers-Monde,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 March 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Use of depleted uranium (DU) in armed conflicts and its effects on economic, social and cultural rights: Gulf and Kosovo cases

Ammunition made of DU was first used in combat by American and British forces during the 1991 Gulf War. Since then, DU ammunition has been firmly established as a tool of modern warfare.

DU is the low-level radioactive waste product of the uranium enrichment process. As nuclear waste, it is literally dirt cheap. The United States alone has produced some 700 million kilograms of DU. Recent disclosures indicate that some of the United States' DU (and the ammunition made from it) contains plutonium and neptunium.

DU's extreme density and pyrophoricity (ability to burn) made it attractive for use in ammunition called *kinetic energy penetrators*. This ammunition does not explode; rather, it relies upon density and speed to pierce its target.

Effects of Depleted Uranium on Health

DU presents the greatest risk to human health when fragments are embedded in the body or when DU dust is inhaled or ingested. During and after the Gulf War, thousands of soldiers and local civilians may have inhaled or ingested DU dust. The effects of this dust on soldiers and civilian populations have not been studied. However, a study of several veterans wounded by DU fragments has found elevated levels of DU in veterans' urine and semen, abnormal reproductive hormone levels, and subtle neurocognitive problems.

Recent US military studies of mice found that DU fragments in the body break down over time, releasing DU particles into the bloodstream which lodge primarily in the kidney and bone and to a lesser degree in the brain, testes, lymph nodes, and other organs. DU also crosses the placenta of pregnant female mice and lodges in the fetus.

Observed health effects include decreased litter size in mice born to DU-implanted females and neurocognitive problems. *In vitro* studies found DU induces mutagenicity and cellular changes that may cause cancer. Based on their findings, US military researchers have called for further studies of DU's carcinogenicity, immunotoxicity, neurotoxicity, and male and female reproductive effects.

The proliferation of DU ammunition virtually guarantees its use in the future. Since 1991, DU ammunition has spread to more than 20 countries, including Russia, China, Iran, Israel, Turkey, and Pakistan. As more armed forces acquire and use DU ammunition, the difficulty of preventing DU's health and environmental effects increases.

The amount released in future conflicts could easily surpass the 290 metric tons used in the 1991 Gulf War. The United States' use of DU ammunition has reached the point of failing to adequately protect soldiers from exposure, of withholding warnings from civilian populations, and of neglecting to clean up DU contamination. If this behavior is adopted by other countries in future conflicts, health and environmental effects of the use of DU ammunition will significantly increase over time.

Aspects of the problem

- There is a lack of research specifically examining the health and environmental effects of DU ammunition.

- Health and safety laws generally require the use of protective equipment in contaminated areas and medical testing of individuals with known or suspected exposures to dangerous toxins.

- The extent to which plutonium and neptunium contaminate the DU ammunition shot in the United States, Iraq, Kuwait, Bosnia, Puerto Rico, and Kosovo remains unknown, and this limits thorough health assessments.

- The international community has agreed to restrict the use of certain weapons that can cause widespread and/or lasting harm. The release of DU may result in «superfluous injury or unnecessary suffering» to civilian populations, which would place DU ammunition in violation of Article 35 of the 1977 Protocol to the Geneva Convention.

- If DU ammunition is determined to be illegal under existing agreements, or it becomes subject to a comprehensive prohibition, the United Nations or the International Criminal Court could hold governments and individuals accountable for its use. The threat or imposition of reparations could induce governments and armed forces to provide warnings to civilian populations and conduct post-conflict clean up of DU contamination.

- The dictates of conscience require careful consideration of the effects spent DU ammunition may have on human beings, and on the land and water people depend upon to survive.

- The United States alone has 35 different anti-armor weapons, plus another 10 weapons under development. DU ammunition is but one tool in a vast anti-armor arsenal, and its necessity is highly questionable.

Impediments

Continuous Pentagon resistance to investigations of DU ammunition represents the most significant impediment to a resolution of this issue. While the Pentagon is primarily interested in safeguarding the use of DU ammunition, it is also strongly influenced by a desire to avoid the

financial obligations of cleaning up DU contamination and assisting veterans and civilians adversely affected by its use.

Pentagon spokesmen have consistently asserted that Gulf War DU exposures were minor in scope and severity, but US congressional investigators recently confirmed that the Pentagon has no data to support its position. This undermines the claims of the Pentagon-funded RAND Corporation report, which concluded that not one Gulf War veteran was exposed to enough DU to cause any health problems.

The Pentagon has refused to comply with a 1993 congressional mandate to study the health effects of inhaled and ingested DU dust. In 1999, the Pentagon obstructed a United Nations investigation of the use of DU in Kosovo and is continuing to withhold vital information from the UN-mandated Balkans Task Force charged with cleaning up the pollution caused by the war.

Those who profit from the manufacture and sale of DU ammunition, and those who desire to use it, are maneuvering to ensure the unrestricted future use of DU munitions. Among the parties with an economic stake in the continued use of DU ammunition are the US Department of Energy, US Department of Defense, US ammunition manufacturers such as Primex Technologies and Aerojet Corp., and arms merchants in Russia, Pakistan and other countries. A major incentive to downplay DU's dangers is the exorbitant cost of cleaning up and disposing of DU contamination.

DU ammunition is very effective in piercing armored targets such as tanks, and also underground installations. Since military decision-making focuses on short-term goals rather than long-term effects, military planners are highly unlikely to consider health and environmental consequences of using DU ammunition.

THE INTERNATIONAL SCENE SINCE THE YUGOSLAVIA WAR

In the international arena, there is evidence of powerful opposition to efforts to evaluate the most recent known use of DU, to wit in the 1999 Yugoslavia war, and to study the question in a broader context. An initial assessment mission to Yugoslavia in May, 1999, included a specialist from the UN Environmental Program. His report warning of DU contamination was suppressed, apparently upon orders from people at the top susceptible to pressure from the Pentagon. In June, the World Health Organization undertook to produce a fact sheet on DU then quietly cancelled it, apparently in deference to the International Atomic Energy Agency which has effective veto power over any WHO project touching on public health and radiation (even though the IAEA is not a public health agency and is not competent to study such questions itself). Since then the WHO has announced that it will limit itself to a generic study of DU, which must be peer-reviewed and whose preparation could take several years. The Balkans Task Force, mandated to assess the war-engendered pollution, was refused access to NATO's targets and munitions lists.

Yet the United Kingdom government saw fit to issue a travelers' advisory aimed particularly at media and humanitarian workers, warning against DU contamination. The Dutch government announced that it would issue protective clothing to its troops in Kosovo, to guard against DU contamination. (Curiously, later, in the fall of 1999, all clothing and equipment used by Dutch troops in the area of Prizren was summarily collected, shipped to the Netherlands sealed in heavy-duty plastic and stored in depots reserved for dangerously contaminated material.)

The Belgian government announced that, upon return to Belgium, troops sent to the area would be tested for DU contamination. Both Italian and German soldiers in the area are under strict orders not to eat anything outside their mess halls and supply depots, specifically no locally produced food, because of the fear that DU has entered the food chain.

Sadako Ogata, High Commissioner for Refugees, has admitted her grave concern for the safety of the Office's aid workers in the field because of the danger of DU contamination. These have been offered the option of refusing duty stations in Yugoslavia and have been informed that if they do accept such a posting a note will be put in their personnel files attesting to this posting, in order to facilitate, if necessary, the workers' later claims for compensation, in the event of negative effects upon their health imputable to their Yugoslavia duty. Further, the Office of the High Commissioner has seen fit to make certain that no pregnant women are sent to the area.

Yet the United States government adamantly refuses to admit that their acknowledged use of DU in Yugoslavia -- or elsewhere, for that matter -- might cause environmental and health dangers. Further, they are still dropping DU on southern Iraq in their continuing bombing campaigns there.

There is an indisputable need for additional research to clarify DU's health and environmental effects. Future research by international experts should examine the amounts of DU oxides likely to be inhaled or ingested in a range of exposure scenarios, and the possible short- and long-term effects these levels of exposure could have on living organisms. When the levels of plutonium and neptunium in America's DU ammunition are revealed, additional health assessments should be performed.

While additional research is conducted, domestic and international courts should hold governments and armed forces accountable for failing to protect soldiers from exposure, withholding warnings from civilian populations, and neglecting to clean up DU contamination. Strict adherence to health and safety laws could prevent or minimize DU's potential adverse health and environmental effects.

The most practical way to prevent the proliferation of DU ammunition use, however, is to persuade armed forces to suppress it.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by Pax Christi International, International Catholic Peace Movement, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 March 2000]

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CUBA: VIOLATIONS INTENSIFY.
SPECIAL RAPPORTEUR REQUESTED.

Human Rights

Contrary to the expectations after the Papal visit in January 1998, freedom and democracy have not improved in Cuba. The April 1998 resolution of the UN Commission on Human Rights was an expression of international concern. In spite of international criticism, repressive legislation in Cuba has not been abolished or reformed. Numerous civilians, especially civil groups like independent journalists, human rights advocates, those who demand amnesty for political prisoners and those who organise independent libraries, independent agricultural co-operatives, independent workers' unions and many more, have been victims of systematic aggression by the authorities.

Pax Christi welcomes the public concern of the Catholic Church about the suffering of the Cuban people as well as the solidarity of former Eastern European dissidents, as expressed in their public letter of November 1999.

Practices like intimidation and harassment and short term arrests as well as long term sentences have not diminished during 1999. According to the CNPEPP (National Co-ordination of Prisoners and Ex-Political Prisoners) and Reporters without Frontiers the political police even intensified the persecution of dissidents, journalists and common civilians. Death penalty legislation was expanded. According to Human Rights Watch at least 12 prisoners were executed in 1999.

In 1999 prominent dissidents like the four leaders of the Internal Dissidents Group (GTDI) were sentenced to several years of prison for attempting to present a democratic non-violent alternative: as expressed in a document 'The homeland belongs to us all'. In December of the same year the president of the 'Democratic Party November 30 Frank Pais' Ms. Maritza Lugo (whose husband was already sentenced to 20 years), was put in prison for co-operating in preparing a Christmas procession. The well known physician Oscar Biscet of the Lawton Human Rights Foundation (FLDH), which promotes particularly the right to life (opposing death penalty and forced abortion), was detained 26 times in 18 months; expelled from the Cuban National Health System (Feb. '98) and evicted from his home, depending on charity of friends. He has been mistreated physically and psychologically numerous times, suffering beatings, threats, blackmails and arbitrary incarcerations in cells along with insane individuals. State security pressures him to leave the country, to which he reiterated that he will never abandon his country. Arbitrarily detained since November 1999, in February 2000 the State Prosecutor petitioned a seven-year jail sentence. On February 25 Doctor Biscet was sentenced to three years. Many other peaceful activists share the fate of Dr. Biscet and have to endure inhumane prison conditions. Their crime is to honour the Universal Declaration of Human Rights in their own country. Also in January 2000 human rights activist Oswaldo Paya from the Christian Movement for Liberation (MCL), well known to Pax Christi, and Hector Palacios from the Democratic Solidarity Party, were arbitrarily detained and

threatened with criminal prosecution if they continued their actions in defence of democracy and human rights. The independent journalist Victor Arroyo was detained and sentenced for six months just for distributing toys to poor children during the celebration of Epiphany.

Cuba's legislation impedes the exercise of fundamental human rights like freedom of expression, movement, assembly and press. The 'Law for the protection of national independence and the Cuban economy' (Feb. 1999) opens the door to penalties up to 15 years for those who 'supply or gather information' that could be interpreted as 'supporting the economic war against Cuba'. Cuba's criminal code continues to be implemented against innocent civilians, penalising them with sometimes years of imprisonment because the authorities consider them 'dangerous', for spreading 'unauthorised news', or showing 'disrespect', because they tried to leave the country 'unauthorised' or simply because they spoke out.

Independent trials do not exist in Cuba and convictions are often based on 'confessions' extracted during detention. No independent human rights group, national or international, can monitor human rights in Cuba. Representatives of international organisations such as Human Rights Watch, Amnesty International, Reporters without Frontiers and Pax Christi are not allowed access to the country. In Cuba the International Red Cross (ICRC) is unable to fulfil one of its essential task: visiting jails. The Catholic Church has this possibility, but is in this task heavily limited and controlled by the authorities.

However, the deplorable situation of Cuban prisoners has become evident to the world. Referring to political prisoners, in the October 1999 report 'Medical Concern', Amnesty International reports on the practice of deliberately withholding medical attention and food as punishment to certain prisoners. Recently independent journalists reported on several cases of prisoners beaten to death. Forced labour under severe conditions is a common practice.

The international community and Cuba

It is clear the Papal call to the world to open itself to Cuba and to Cuba to open itself to the world, did stimulate increased international contacts with Cuba, especially with Latin American and Caribbean states. But Cuba did not open up to its own people.

Economically Cuba relies highly on Canadian and European investors. European enterprises increasingly respond positively to the efforts of the Cuban government to attract foreign investment, including restrictions on labour rights. Yet it is well known that Cuba violates core labour rights as defined by the ILO conventions (direct payment, freedom of assembly, freedom of bargaining, no political discrimination, etc.). Foreign investment under the actual conditions established by the Cuban authorities has contributed to the division in society between those who have access to dollars and those who have not. It increased discrimination and stimulated the rise of a new wealthy class in control that is based in state institutions like the Party and the military. The state of misery the Cuban population is forced to live in has –

particularly in the capital of Havana – led to massive prostitution among all social backgrounds and including children; a shameful situation Western tourism is exploiting. Contrary to the claims of some, until now foreign investment has not led to internal economic or political opening.

Pax Christi calls on all companies that invest in Cuba to apply international standards (such as the ILO conventions that Cuba has ratified) to Cuban practice and press the Cuban authorities to do so, starting by recognising independent trade unions. Rather than taking advantage of cheap labour and state repression, best business practices – for example the 'Arcos Principles'- could be taken as guidelines for Cuba.

Pax Christi calls on the United Nations to again appoint a Special Rapporteur for Cuba, and recommends a visit to the country by the UN High Commissioner for Human Rights.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement*/ submitted by the International Federation of ACAT (Action of Christians for the Abolition of Torture), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 March 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Inhuman detention conditions... the need for international controls

The International Federation of Action by Christians for the Abolition of Torture (FI.ACAT) draws the attention of the Commission on Human Rights to the issue of people being detained in inhuman and degrading conditions in two countries in particular.

1. In the State of São Paulo in Brazil, the rise in juvenile delinquancy and an increase in the number of detention orders given by the courts are two factors which have contributed towards serious and permanent overcrowding in the two centres for minors, managed by the Fundação do Bem-Estar do Menor (FEBEM). The one in Tatuapé, which was designed to take 800 minors, accommodates almost twice as many, and the one in Imigrantes, which has a capacity of 364, has a population five times greater!

As a result, there are not enough mattresses in the cells and they are often soiled because access to the toilets is forbidden at night; sanitation is no longer adequate and on top of this facilities are dilapidated; with less than a minute being allowed to take a shower and soap being shared, skin diseases are rife. During the day, while some detainees may benefit from literacy classes, most remain at a loose end in the yard, without even a football to play with. A delegation from Amnesty International and other human rights defence organisations was able to see this when it visited the site.

The situation is made still worse by the violence. As a result of this overcrowding and the fact that there is no separation between those on remand and those who have been sentenced or between different age groups, violence abounds between detainees. On 20 October last, four young people were apparently killed by their fellow detainees. Moreover, violence is used by the prison officers, who are notably insufficient in number (there is one for around every 80 detainees) and lacking in training, but also by the military police called in as reinforcements to prevent escapes (on 26 August 1999, 60 young people were hurt); furthermore, in September there were no less than 12 riots in 15 days, and the ensuing crackdown - when the anti-riot police went so far as to fire rubber bullets at the families present round about - was widely broadcast on television.

FI.ACAT asks the Commission to call on the Brazilian Government to remedy situations of this kind where the integrity and dignity of these minors are being attacked, and to give judges the means to recommend one of the five alternative punishments provided in law - at Tatuapé, around 70% of the young people could be affected - so as to avoid trapping them in the cycle of delinquancy and recidivism.

FI.ACAT notes furthermore that although the Brazilian Government ratified the Convention Against Torture in 1989, since then it has never discharged its obligation to produce periodic reports.

2. In the Democratic Republic of Congo, where there is an ongoing armed conflict, arbitrary detention has become a systematic practice, whether in the part of the country controlled by the government or in that controlled by the rebels.

The government has attacked those in positions of political authority, defenders of human rights, union leaders, journalists, soldiers, students, and so on. These people have been arrested and detained in cells and in other secret locations belonging to the ANR (Agence Nationale des Renseignements), the police, the GSSP (Groupe Spécial de la Sécurité Présidentielle), and the DEMIAP (Détection des Activités Militaires Anti-Patrie), where they are being subjected to torture and ill-treatment.

In the other part of the country, the RCD and the Rwandan, Ugandan and Burundian armies are attacking civilians and in particular anyone who is or is presumed to be an opponent. Thus, peasants, intellectuals, local leaders and defenders of human rights have been arbitrarily detained in the cells of the information services, in military camps and in officers' private residences!

Concerned by these practices which undermine human dignity, FI.ACAT asks the Commission on Human Rights to demand that the conflicting parties respect the integrity of those under arrest.

FI.ACAT also finds that the government has not always discharged its obligation to produce periodic reports following the entry into force of the Convention Against Torture in the DRC in April 1997.

3. These examples clearly demonstrate the urgency - already underlined at the World Conference on Human Rights in June 1993 - of seeing the optional protocol to the Convention Against Torture finally adopted so that its future sub-committee can carry out visits to detention centres and recommend, with the cooperation of governments, the required measures.

FI.ACAT, which is a member of CINAT (Coalition of International NGOs Against Torture), asks the Commission on Human Rights to insist that governments facilitate the final adoption of the text on the protocol, as this mechanism should offer effective prevention and make it possible to visit all detention centres, be they military or private.

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THE RIGHT TO DEVELOPMENT

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 March 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

1. Mr. Arjun K. Sengupta, independent expert on the right to development, emphasized in his study on the current state of progress in the implementation of the right to development that all economic, social and cultural rights as well as civil and political rights come under the heading of development. An integrated approach to these rights is therefore needed. Mr. Sengupta recommended that a place to start in realizing the right to development is to focus on the rights to food and primary health care as minimum measurements of realization.[1] These rights, firmly established in the International Covenant on Economic Social and Cultural Rights, are the most basic of human needs and ought to be given a high priority in the use of States' resources. As discussed below, environmental degradation contributes directly to violation of some of these rights.
2. This era of globalization presents new challenges to the protection and promotion of human rights. International lending institutions such as the World Bank continue to look at development in terms of gross national product which often excludes factors of health, welfare, and the environment. The proliferation of international trade agreements and the growing influence of the World Trade Organization (WTO) have resulted in elaborate frameworks for compliance with free trade rules while the impact of economic liberalization on human rights and the environment often is ignored.
3. The policies of the World Bank have the outward appearance of concern for human rights and the environment and such efforts are to be commended. However, the actual effectiveness of implementation of such policies has not been clear. Although the World Bank established the Global Environment Facility (GEF) with the intention of bringing more attention to environmental concerns, an evaluation of GEF by an independent panel found "'a consistent, biased exaggeration, if not falsification, of the amount of consultation and participation with governments, NGOs, and affected communities in the project documents.'"[2] Additionally, the World Bank's original policy on displacement of tribal peoples voiced positive goals but has not been implemented as planned.[3]
4. International bank lending grew from $265 billion in 1975 to $4.2 trillion in 1994.[4] The ability of the World Bank to lend money in such large numbers is a strong tool for gaining compliance with human rights and should be used to that effect. The Bank's policies have not done enough to ensure protection of these rights.
5. Similarly, the strong desire of states to participate in the benefits of free trade can be used as an incentive to work towards realization of the right to development. There

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[1]Open-ended Working Group on the Right to Development, Geneva, 13-17 September, 1999. U.N. Doc. E/CN.4/1999/WG.18/2

[2]Catherine Caufield. *Masters of Illusion: The World Bank and the Poverty of Nations*. 268-69 (Henry Holt and Company: New York) (1996).

[3]Kevin Danaher. *50 Years Is Enough: the case against the World Bank and the International Monetary Fund.* 115 (South End Press: Boston) (1994).

[4] Human Development Report 1999, United Nations Development Programme.

must be a mechanism for interaction between these international institutions and human rights protections.

6. The following cases demonstrate the adverse impact on human rights and the environment resulting from policies of the World Bank and international trade pact provisions.
7. The Ecudorian Oriente is a rainforest beneath the Andes Mountains that forms the eastern half of Ecuador.[5] Oil is one of the principal sources of income for Ecuador as well as a source of environmental damage to the Amazon region's ecosystem.[6] The World Bank provided a $20 million loan to Ecuador that helped it adopt legal reforms to make it more attractive to foreign oil companies that were needed to exploit the oil reserves under the rainforest.[7] The Trans-Ecuadorian Pipeline is responsible for spills in the amount of 16.8 million gallons and Texaco discharged 4.3 million gallons of toxic "produced water" per day into the region that has found its way into the local streams and rivers. When the ground storage overflowed from the dumping, Texaco burned off the excess which resulted in air pollution and "black rain".[8] The contamination of the air and water has been catastrophic to the local peoples. Indigenous tribes in the Oriente have suffered from chronic skin irritations, an increase in birth defects and concentrated waves of cancer.[9] This constitutes a direct violation of the rights to physical and mental health embodied in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
8. The Yadana Pipeline carries natural gas from Burma (Myanmar) to Thailand's Ratchaburi power plant. The recession in Thailand has resulted in delay in completing this plant which has caused a temporary lapse in its contract obligations to Burma for consuming natural gas.[10] As part of a financial package to Thailand in assistance of recovery from the Asian currency crisis, the World Bank agreed to fund the completion of the Ratchaburi power plant despite objections from human rights organizations and environmentalists. These organizations raised concerns that the Yadana pipeline had been the subject of numerous human rights abuses including forced relocation of indigenous villages and has also had adverse environmental impacts on endangered species and other biodiversity.[11] The World Bank has ignored these impacts in approving the project. Thailand's privatization strategy has taken precedence over the risks to indigenous peoples presented by the coal and gas-fired power plant. This impacts the rights of health as well as the right of self-

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[5] Eyal Press, *Texaco on Trial*, The Nation, May 31, 1999.

[6] Dr. Miguel San Sebastian and Dr. Juan Antonio Cordoba. Translation by Kristen Keating. *"Yani Curi" Report: The impact of oil development on the health of the people of the Ecuadorian Amazon.* (Departamento de Pastoral Social del Vicariator de Aguarico, London School of Hygiene and Tropical Medicine, Medicus Mundi) (June 1999).

[7] Caufield, 269.

[8] San Sebastian and Cordoba.

[9] *The World Bank and the G-7: Still Changing the Earth's Climate for Business 1997-98*, (Sustainable Energy and Economy Network (Institute for Policy Studies, USA) and International Trade Information Service (USA)), (Version 1.3 December 1998).

[10] Id.

[11] Id.

determination under Article 1 of the International Covenant on Civil and Political Rights (ICCPR).

9. The effect of trade pact provisions has led to the subversion of national democratic processes to preserve health and the environment. MTBE, a fuel additive, has been found in drinking water around California as well as other areas in the United States. Due to the dangers this additive presents to human health, the Governor of California, Gray Davis, ordered a phase-out of this chemical. Methanex, a Canadian corporation that produces the main ingredient of MTBE has filed suit under the North American Free Trade Agreement (NAFTA) claiming unfair trade discrimination. Under the agreement, Methanex will likely prevail and California will have to repeal this health protection provision.[12]
10. Similarly, Venezuela and Brazil won a decision by the WTO that the United States Clean Air Act, restricting gasoline to reduce emissions that cause smog and air pollution, is unfairly discriminatory against foreign gasoline producers and therefore was a violation of the General Agreement on Tariffs and Trade (GATT).[13] These issues present obstacles to the attainment of rights such as self-determination under Article 1 and participation in public affairs under Article 25 of the ICCPR.
11. The emphasis of right to development is on the individual human person as the prime beneficiary of economic development. The statements made by the High Commissioner for Human Rights reflect the necessity for stronger cooperation in the international economic system as well as an integrated approach to implementation of human rights which takes into account the special circumstances of globalization to ensure that individuals benefit from economic growth.[14]
12. HRA recommends the following actions:

    (1) Support for the suggestion of the Independent Expert on the Right to Development that the High Commissioner of Human Rights pursue dialogue with the World Bank and other financial institutions with a view to prevent a decline in non-income indicators of well-being such as health and nutrition at a time when average income is growing.

    (2) Support for the suggestion by the Working Group on Mechanisms that the mandate of the Special Rapporteur on Toxics be expanded to cover human rights and the environment, generally, especially in light of the complaints received by the Special Rapporteur which were outside the scope of her mandate.[15] The expansion of her mandate should include closer examination of development projects and trade pact provisions which impact the environment and present risks to the attainment of human rights such as life and health.

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[12]Simon Retallack, *The WTO's Record so Far - Corporations: 3, Humanity and the Environment: 0*, The Ecologist, Vol. 27 No. 4, July/August 1997.

[13] Jonathon Peterson, *A World of Difference in Trade Views*, Los Angeles Times, November 28, 1999.

[14] Mary Robinson. Swiss Federal Institute of Technology, Zurich, 1 July 1999.

[15] E/CN.4/1999/46, paragraph 100.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 March 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Adverse Effects of the illicit movement and dumping of toxic and dangerous products and waste on the enjoyment of human rights

1. Human Rights Advocates (HRA), in conjunction with Natural Heritage Institute (NHI), submit this written statement to the Commission on Human Rights. First, HRA commends the Special Rapporteur on her work in the past year. HRA also recognizes the Special Rapporteur's support for creating a process to examine complaints involving environmental degradation and its effects on human rights. HRA also notes with approval that the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights requests that the mandate of the Special Rapporteur be broadened to that of human rights and the environment. The following are case studies in three areas that warrant an expansion of the current mandate:

2. Shipbreaking: Shipbreaking is a valuable recycling industry that rids the oceans of aging ships, reduces excess capacity in market, and creates labor opportunities. However, it is also a major contributor to human rights violations.

3. The Basel Ban, adopted in 1995, makes the export of hazardous wastes from OCED to non-OCED countries illegal. Although the export of toxins aboard these ships are prohibited, the actual ships themselves are not.[1] Exportation of toxic ships to developing countries allows multinational corporations and countries to avoid the stringent worker and environmental safety standards enforced in developped countries.

4. Shipbreaking relies primarily on cheap manual labor found in countries such as India (scraps 70%), Pakistan, Bangladesh, China, Vietnam and the Philippines, where environmental standards are virtually nonexistent. These workers' human rights to life and health are being violated on a daily basis because they are unskilled, uninformed, ill equipped, and unsupervised. For example in Alang, India, site of the world's largest shipbreaking yard, there are no unions, limited medical facilities, and a single fire engine for all emergencies.[2] Wearing no protective gear,[3] workers are exposed to an average of a few hundred tons of toxins[4] per ship dismantled. The air they breathe is polluted by carbon monoxide and toxic hydrocarbons produced by the open fire burning of leftover oil.[5] These substandard working conditions explain the prediction that one in every four laborers will get cancer.[6] Workers also fall victim to injury and death resulting from explosions[7] as well as paralysis, nervous system and respiratory ailments.[8] In addition, laborers working sixteen hour days for 60-100 rupees ($1.50-$2.50), cannot improve their conditions because they are unregistered, unorganized and without the protection of labor laws.[9]

5. An international enforcement mechanism must be established to ensure compliance with international agreements. Ships are continually exported from OCED to non-OCED countries without their prior consent regardless of the Basel Ban. For example, India has only authorized seven importers yet one hundred fifty import regularly. Domestically, countries are unsuccessful in enforcing laws because ports are uninformed of laws and there are no provisions set up to return illegal consignments.[10]

6. Long term goals for addressing these problems should include: (1) environmentally safe and easily dismantled ships; (2) phasing out the use of highly toxic material; (4) required inventories of toxins aboard exports; (5) modernized facilities and technical supervision (6) financing industrial equipment and protective clothing; (7) government subsidies to cooperating companies; (8) and penal measures for violation of laws. With approximately two thousand cargo ships waiting to be scrapped in the next five years,[11] an international campaign to eliminate loopholes and ensure the right to life and health of these workers is urgent and necessary.

8. Effects of Pesticides on Human Rights: Thousands of people are killed or seriously poisoned by toxic pesticides every year.[12] In New Mexico, United States, workers labor under terrible conditions for minimum wage while constantly exposed to pesticides known to cause birth defects, cancer, and neurological defects.[13] During spraying farmers are exposed to contamination by absorption through skin of residues on clothing. In China, a study of 27 provinces in 1995 showed that of the 48,377 incidents of poisoning and 3,204 fatalities, more than 7,500 of these were due to normal agricultural use of highly toxic pesticides.[14]

9. POPs (Persistent Organic Pollutants), of which pesticides is the largest category, are carbon based compounds that become widely distributed through natural processes (air, soil, and water)[15] and via living organisms (especially fish, predatory birds, and humans) through absorption in the food chain and genetic transfer.[16] Low doses of POPS cause cancer, damage to the central nervous and peripheral systems, immune and reproductive disorders, as well as development[17], and learning disorders.

10. Developing countries still market pesticides that are banned or severely restricted in developed countries and continue to use cheaper highly toxic organophophorous pesticide formulations. Acute poisoning is common because pesticides are not handled safely and protective clothing is too expensive or cannot be used in these climates.[18]

11. The Special Rapporteur's mandate needs to be expanded to include consideration of the effects on human rights of the use and export of pesticides that are legal but nevertheless highly toxic. Developing nations need technological and financial assistance to employ alternatives to highly toxic pesticide use and cleanup accumulated stockpiles. Provisions for the better distribution of information through safety labels on exports and the development of procedures to monitor and control cross border trade must be enforced in order to protect the right to life and health of these farm workers.

12. Oil Pollution: Oil pollution's devastating effects on the environment directly violate the right to life, work, and health because the productivity of land is ruined leaving thousands of people in the surrounding areas at risk of health problems and without a means to subsist in a dignified and self-sufficient manner.

13. These problems persist in Tabasco, Mexico, where the human rights to work and health are violated by the nationally-owned oil company PEMEX which is responsible for the destruction of 60% of the region's crops and vegetation. Between 1984-1994, several hundred thousand damage claims were filed by farmers, fisherman, and cattle ranchers whose livelihood were destroyed by oil spills as a result of broken pipelines, malfunctioning pumps, and acid rain caused by the sulfuric acid released into the air by petroleum processing.[19] Oil pollution makes farming, fishing, and cattle ranching impossible because it kills vegetation and pollutes surrounding waters poisoning marine life and disrupting the ecosystem. With their own means of subsistence destroyed, many ex-farmers, children, and elders in the La Venta Wetlands, Tabasco have resorted to working for PEMEX cleaning up oil spills which further exposes them to hazardous health conditions. These people have been termed "chaperos" (tar people) because they are covered in oil from working without protective gear and bathing in diesel to clean themselves.[20] Regardless of the resulting loss of livelihood and sanitary resources, most of the several hundred damage claims filed against PEMEX have been inadequately compensated or left unaddressed.[21]

14. Similar violations exist in other countries such as Azerbaijan and Columbia. In Colombia, the human rights to environment and life are violated when protestors of oil drilling are killed by military and police.

14. Those examples highlight the need for some procedure to assess the impact of legal toxins and environmental problems on human rights. HRA recommends that the Commission ask the Special Rapporteur to consider what would be the terms of an expanded mandate that would include problems such as those involving legal toxins and environmental degradation and its direct impact on human rights.

Notes

1. *Protest in India Against Toxic-Laden Ships* (Jan. 21, 1998) <http://www.ban.org/ban_news/indian_protest.html>

2. *Greenpeace: Shipbreaking Poses Hazard to Workers* (Feb. 18, 1999) <http://www.ban.org/ban_news/greenpeace_shipbreaking.html>

3. Ranjit Dev Raj, *Shipbreaking Indefensible, says Greenpeace*, INTER PRESS SERVICE, Feb. 19, 1999.

4. Matt Dailey, *Ship Scrapping Knocked but Alternatives Elusive*, REUTERS, June 23, 1999.

5. *Workers at Shipyards Face Serious Health Hazards* (Feb. 18, 1999) <http://www.ban.org/ban_news/workers_at.html>

6. *Shipbreaking is Dangerously Polluting*, GREENPEACE PRESS RELEASE, Feb. 18, 1999.

7. John Zubrzycki, *Recycling the World's Once-Mighty Ships*, CHRISTIAN SCIENCE MONITOR, June 26, 1998.

8. *Indians at Shipbreaking Yards Face Health Hazards*, AGENCE FRANCE PRESSE, Feb. 18, 1999.

9. *Greenpeace: Shipbreaking Poses Hazard to Workers, supra* note 2.

10. Ravi Agarwal, *India: The World's Final Dumpyard*, 1 BASEL ACTION NEWS 1, (Jan. 1998) <http://www.ba.org/ban_news/india_as_dumpyard.html>

11. *Norway Propose Global Rules on Ship Scrapping*, ENDS DAILY, Feb. 25, 1999.

12. Robert Bisset, *Hazardous Chemicals a Top Priority for Global Environment*, UNEP NEWS RELEASE, Mar. 27, 1998.

13. *The Use of Pesticides in New Mexico*, http://www.farmworkers.org/pestieng.html.

14. Ake Bjorke, *Convention on Trade in Dangerous Chemicals and Pesticides*, UNEP NEWS RELEASE, Mar. 9, 1998.

15. *Press Conference on POPs* (Jan. 20, 1998) <http://srchl.un.org:80/plweb-cgi/fastweb...ATE&TemplateName=predoc.tmpl&setCooki=1.

16. Robert Bisset, *supra* note 12.

17. Ake Bjorke, *Treaty Talks Start on POPS, UNEP NEWS RELEASE, June 22, 1998.*

18. Ake Bjorke, *supra* note 14.

19. Wendy Call, *Mexican Oil Mess,* DOLLARS AND SENSE, Jan. 2000, at 19.

20. *La Venta, the Cradle of the Olmec Culture Converted by PEMEX into Petroleum Coated Wetlands*, (April 1, 1997) <http://greenpeace.org/-comms/mexico/rwprapr01.html>

21. Wendy Call, *supra* note 19.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 March 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

A call upon member States of the United Nations to comply with international human rights standards prohibiting the return of persons to a State where they are likely to be subject to torture, pursuant to the Convention Against Torture, and Other Cruel, Inhumane and Degrading Punishment, article 3

1. Torture, and the fear of torture, displaces thousands of annually. These persons, forced to flee for sake of survival, often have no choice but to seek safe havens in other lands. There are, however, States where these individuals are not receiving the protections required by international human rights standards relating to torture. As a result, victims of torture are often unable to get the protections international human rights standards require.

2. Human Rights Advocates (HRA) submits this report to the Commission on Human Rights, in order to highlight this non-compliance pertaining to international standards governing an individual's right to be free form torture, and to encourage the Commission to call upon the States of the international community to bring their domestic practices into compliance with these international standards, as codified in the Convention Against Torture article 3, which has been ratified by 118 States./United Nations Treaty Database, www.untreaty.un.org./

3. In bringing this matter to the attention of the Commission, HRA recalls the Commission's 1999 resolution, which states that *"freedom from torture and cruel, inhuman or degrading treatment or punishment is a non-derogable right and that the prohibition of tortured is explicitly affirmed in article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. . . ."* In complying with this non-derogable right, it is as important for a State not to return an individual to a country where she is likely be tortured, as it is for a State to ensure that an individual is not tortured within its own boundaries.

4. Article 3 of the Convention Against Torture, and other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) codifies the international standard on the non-refoulement of torture victims. Under article 3, a State party is prohibited from returning a person to another State where there is reason to believe she would be subjected to torture. Human rights advocates, concerned with the current state of refugees around the world and the increasing difficulties these individuals face when seeking asylum or other forms of protection in another State, hailed the inclusion of article 3 in the CAT as a new recognition of human rights standards. These same advocates believed, based upon the language of article 3, that article 3 could provide protection for those who are unable to meet the stringent standards of asylum law.

5. HRA asserts, however, that this result has not been achieved. The prohibition against returning an individual to a country where she is likely to be subject to torture has not been implemented as foreseen. And, without cognizant recognition of, and protection of, this fundamental human right, States are not in compliance with their international human rights obligations.

6. A clear example of this failure to recognize the importance of protecting the prohibition in article 3, and the detriment to human rights which results, can be seen in the case of the United States. Human rights groups did indeed welcome the U.S.' recognition of the international human rights standards on torture, evidenced by the country's ratification of the CAT in 1990./136 Cong. Rec. S. 17486-92 (daily ed., October 27, 1990)./ However, the reality of the situation is that, despite the country's proclaimed intent to protect human rights in relation to torture, the U.S has failed to appropriately implement the provisions of article 3 in order to protect international human rights standards.

7. For example, the U.S., via an "understanding", raised the standard of proof required for an individual to prove she fears torture in her own country from that of " substantial grounds for believing" she would be tortured if returned to her home country, to the standard of *"more likely than not."* This heightened standard requires an individual to prove, based only on objective evidence, that there is a clear probability (i.e. more than a 50% chance) that the individual would be subject to torture in the future, without taking into account any past harm the individual may have suffered./Anker, Deborah, E. Law of Asylum in the U.S. (Refugee Law Center 1999), pgs. 513-518./

8. Another example can be seen in the U.S.' delayed implementation of domestic mechanisms to codify the international CAT standards and protect individuals from being returned to their torturers. In fact, almost a decade elapsed between the time the U.S. agreed to abide by these international standards in 1990, and the time the first domestic regulations executing these standards were promulgated. Regulations governing the Immigration and Naturalization Service's (INS) procedures for hearing cases of individuals who feared torture if forced to return to their home countries were not released until March 1999./64 Fed. Reg. 8478-96 (Feb. 19, 1996)./ Moreover, once the final procedures were actually released, they turned out to be confusing and inadequate in the protections they offer to individuals, in comparison to the recognized international standard codified by the CAT.

9. To remedy this, and to encourage States to quickly and correctly implement the human rights protections promulgated in article 3 (i.e. the right to not be returned to a country where a person is likely to be subject to torture), HRA urges the Commission to take action to encourage States to implement the provision of article 3 into their domestic legislation, and to also submit timely reports on their progress towards the full protection of this human rights as outlined by article 19 of the CAT.

10. Another concern HRA has regarding States who ignore the human rights standards in article 3 is an issue that has been raised to the Commission before – that of unwarranted detention of individuals which amounts to torture, cruel, inhuman, or degrading treatment. Using the U.S. as an example, it has been widely reported that many refugees and asylum-seekers arriving in the U.S., fleeing torture, are held for long periods in detention, in conditions which surely amount to torture and a violation of their individuals human rights. Amnesty International has documented that refugees detained while awaiting a hearing or other form of relief, are held under abhorrent conditions which violate numerous internationally recognized human rights./Amnesty International, Lost in the Labyrinth: Detention of Asylum Seekers in the USA, Report from the 1999 Campaign on the USA, http://www.amnesty-usa.org/rightsforall/asylum/ins./ This treatment contrasts with the resolution of the Commission, as described above, which reminds all States that the prolonged detention of an individual can facilitate torture and could itself constitute a form of cruel, inhuman, or degrading treatment or punishment.

11. Therefore, HRA also urges the Commission to once again remind States that detention can easily amount to torture, and that all efforts should be made to protect refugees, and others fleeing torture in their home country, from being subject to further torture, or cruel, inhuman and degrading treatment in the country in which they seek protection.

12. Only the international standards of human rights protections adopted by the international community and codified in the Convention Against Torture can adequately protect those fleeing torture in their homeland. To facilitate these protections and bring the present procedures of the States into compliance with international law, HRA respectfully suggests that the Commission adopt the following recommendations.

Recommendations

13. Encourage States to modify their laws to provide appropriate mechanisms for those fleeing human rights violations arising to the level of torture, and inhuman or degrading treatment, allowing them to seek the full protections afforded to them under international human rights law.

14. Condemn those States whose practices violate international human rights standards relating to the practice of torture, and inhuman or degrading treatment.

15. Recommend the withdrawal of all State understandings from their instruments of ratification of the Convention Against Torture, thereby fully complying with the international standards.

16. Encourage all State parties to the CAT to make yearly reports to the Committee Against Torture, as required by the Convention Against Torture article 19, so that their compliance with the human rights provision of the Convention Against Torture can be reviewed by the international body charged with ensuring compliance with the Convention.

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RIGHTS OF THE CHILD

Written statement*/ submitted by Human Rights Advocates, Inc.,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 March 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Ways to reintegrate children being demobilized

1. An estimated 300,000 children under the age of eighteen in 36 countries in the world are being used as child soldiers. Many children join armed groups because of economic and social pressure or because they are looking for a shelter. Others are forcibly recruited, or abducted by armed groups. Both girls and boys are being used as child soldiers. This year the Working Group on a draft of a protocol to the Convention on the Rights of the Child in Armed Conflict has come to a consensus that eighteen should be the minimum age for participation in armed conflict. But some problems remain.

2. Some children are still at risk of being recruited because their age can not be determined or proven. Most countries where children are recruited as soldiers already have legislation fixing the minimum recruitment age at 18 years old but younger children are frequently found eligible for military services based only on their older appearance. This is the case most particularly in areas where birth or age documentation are not readily available.[1] Systems for verifying ages must be implemented.

3. Even while governments recognize the existence of child soldiers and create provisions against new recruits, they might not create provisions to aid demobilization of existing child soldiers. The world community has observed that in peace agreements where there was no specific provision for the demobilization of children, childrens' special needs were unlikely to be taken into account.[2] Many former child soldiers did not have access to education, family reunification, or even food and shelter that they needed to successfully rejoin civilian society.[3]

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[1] United Nations, Press release HR/CRC/00/7 on Sierra Leone

[2] Grac'a Machel, expert appointed by the Secretary General for the study on the Impact of Armed Conflict of Children, A/51/306, paragraph 49

[3] Stop the Use of Child Soldiers, www.hrw.org/hrw/campaigns/crp/facts.htm

4. Forced to learn to kill instead of pursuing education, children lack the knowledge and skills needed to build their own futures and the futures of their communities. Because most of the time former child soldiers have nowhere to go, they are easy targets for child prostitution and child labor. Children involved in armed conflicts often need medical attention. Many suffer from physical and mental disabilities. The world community now needs to consider how to prepare to receive demobilized child soldiers. Following are some illustrations of these problems.

Child prostitution

5. Girls that were forced to serve as wives or servants to the combatants require measures to ensure that they are not driven into further sexual exploitation once they are to leave the army.[4] One example of children becoming victims of prostitution following demobilization, was the arrival of peace keeping forces in Mozambique: girls aged 12-18 years were recruited into prostitution by soldiers of the United Nations.[5]

Education

6. Numerous treaties guarantee the right to education. However, many countries do not have the educational infrastructure to allow former child soldiers access to education.

7. In Sierra Leone the majority of schools are destroyed and almost 70 percent of primary school pupils do not attend school.[6] In Angola only 50 percent of school-aged children are enrolled in classes, with a high drop out rate after the first grade.[7] In Georgia, the share of national income spent on education fell from 6 percent in 1990 to just over 1 percent in 1996.[8]

8. While most emergency education programs focus on primary education, secondary education should not be overlooked. The majority of former child soldiers are of the ages appropriate for secondary education. If there is no emergency secondary education available to this age group, children will be left no alternative but reenlistment.

9. For a former child soldier, education is more than a route to employment. It also helps to normalize life and to develop an identity separate from that of the soldier. It should be noted that special classes for former child soldiers may be required until they can progressively reintegrate into regular schooling.

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[4] Grac'a Machel, expert appointed by the Secretary General for the study on the Impact of Armed Conflict of Children, A/51/306, paragraph 97

[5] Ibid, paragraph 98

[6] United Nations Press Release, HR/CRC/00/7

[7] UNICEF information newsline, plea: protect Angola's children

[8] Information drawn from UNICEF Innocenti Research Center's MONEE Project, After the Fall, November 1999

Families

10. It is estimated that 2 to 5 percent of the refugee population in camps are unaccompanied children.[9] Efforts to reunify the child with his family should be one of the first priorities. It will enable the child to recover his sense of security and stability.

11. To locate the children's parents can be lengthy and difficult. In the interim, measures should include foster care to re-introduce children to a family structure and prevent children from reenlisting in armed forces.

12. Attention should be brought to internally displaced children. A lot of child soldiers have been 'internally displaced within their countries'. Sierra Leone's on- going war has resulted in the massive displacement of an estimated 690,000 children under 18 years of age.[10] While refugees benefit from the specific attention of a number of international organizations, those who are displaced internally receive less protection even though they tend to be at greater risk. While internally displaced children ought to be protected by their own state, they are trapped in conflict zones. They are often located in inaccessible and dangerous locations.

Health care

13. Girls that were forced to serve as wives or servants to the combatants, require HIV/AIDS screening. Unfortunately screening for AIDS is not always available. For example there is no comprehensive system in place for test screening for AIDS in Sierra Leone. This is alarming when one knows that each day 8,500 children and young people around the world are infected with HIV. An estimated 200,000 Africans, most of them women, died as a result of conflicts in
1998, while 2 million people were killed by AIDS.[11]

14. Many children are traumatized by their experiences as child soldiers. In Kenya, Kakuma camp provides shelter for other 11,000 Sudanese boys abducted from their families at a very young age by the Sudanese rebel force. They were sent through the mine fields. Many of them suffer from deep depression.[12] They require professional counseling.

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[9] Christiane Berthiaume, Alone in the World, article on Children and Families (95,1-1994) that can be found in unhcr.ch/issues/children)

[10] United Nation Press Release, HR/CRC/007, Committee on the Rights of the Child takes up report of Sierra Leone on Implementation of Children's Convention

[11] The State of the World's Children 2000, Press Summary, UNICEF

[12] Christiane Berthiaume, Alone in the World, article on Children and Families (95,1-1994) that can be found in unhcr.ch/issues/children

15. Millions of children are killed by armed conflict, but three times as many are seriously injured or permanently disabled by it. In Afghanistan alone, some 100,000 children have war-related disabilities, many of them caused by land mines. Only 3 percent in developing countries receive adequate rehabilitative care.[13] This lack of rehabilitative care is contrary to article 23 of the Convention of the Rights of the Child, which lays out clearly the responsibilities of State Parties for ensuring effective access of disabled children to education, health and rehabilitation services.

CONCLUSIONS AND RECOMMENDATIONS

16. Human Rights Advocates welcomes and encourages the implementation of the protocol on the draft to the Convention on the Rights of the Child on the involvement of children under 18 in armed conflicts.

17. Human Rights Advocates recommends that the mandate of the special representative on the impact on armed conflict on children should continue to look at the following issues when addressing the human rights of children who have been in war and are still at risk of rejoining the army:

- considering methods to verify the age of recruitment
- promoting alternatives to child prostitution such as social reintegration and free basic education
- giving children maximum possible access to education and especially to secondary education during and after conflict
- implementing programs for the psychological recovery and the rehabilitation of children
- tracing families of unaccompanied children and meanwhile providing foster care for children

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[13] Grac'a Machel, expert appointed by the Secretary General for the study on the Impact of Armed Conflict of Children, A/51/306, paragraph 145

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 February 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Independence of the judiciary and the struggle against impunity in Cambodia

The International Federation of Human Rights Leagues (FIDH) and its partner organizations in Cambodia, the Cambodian Human Rights and Development Association (ADHOC) and the Cambodian League for the Defence of Human Rights (LICADHO) wish to communicate their serious concern at the run-down state of the whole of the machinery of justice in Cambodia, which it was possible to evaluate during an international mission of inquiry conducted by the FIDH (see report No. 284 of the FIDH, December 1999), particularly with regard to the persistence of impunity arising from that situation.

Deficiencies exist in the judiciary at every level - the decisions of judges responsible for public prosecutions, judgements handed down and the enforcement of those decisions. The FIDH must state with regret that all too often complaints are ignored or are ineffective. As a result of shortages of equipment, staff and documentation, the administration of justice, assessed by universal criteria relating to fair trials, is extremely unreliable and fails to respect the fundamental rights of the individual to be given a fair hearing. For instance, hastily conducted procedures adversely affect the presumption of innocence; periods of detention often exceed the maxima laid down by the Criminal Code; the time required to arrive at judgements is excessive; very often accused persons do not have the assistance of counsel; etc. According to LICADHO, 30 per cent of the "confessions" obtained by the police during questioning are made under torture, and those "confessions" are the only evidence taken into account by the courts for purposes of sentencing of suspects.

The judges today are poorly trained, poorly equipped and poorly paid. The result is a very high level of corruption in the courts. It is clearly necessary to improve the training and the skills of judges and, generally speaking, to increase the budget allocation for the remuneration of the entire staff of the judiciary and for the functioning of the courts. It is equally essential to reorganize the Higher Council of the Magistracy (CSM) to make it genuinely functional and effective. Finally, the status of judges and the organization of the judiciary should be safeguarded by legislation; this is not the case at present. Similarly, certain basic legislative instruments, and in particular the Penal Code and the Code of Criminal Procedure, need to be adopted as soon as possible.

Impunity is endemic in Cambodia. In the view of the FIDH, the principal beneficiaries are the members of the security forces and the "high and mighty", and its principal causes are political interference and incompetence and corruption within the judiciary. Notwithstanding speeches proclaiming the good intentions of the Cambodian Government, our organizations consider that the supreme authorities of the State are not showing sufficient determination to put an end to this problem.

The United Nations Commission on Human Rights, in its resolution 1999/76, stressed that addressing the problem of impunity in Cambodia remained "a matter of critical and urgent priority". In particular, article 51 of the 1994 Law on civil servants, which institutionalized impunity inasmuch as it provided that an official could not be prosecuted without the prior

authorization of his responsible minister or of the Council of Ministers, should be repealed. An amendment to that Law was introduced in September 1999 but was still inadequate. The FIDH and its partner organizations consider that the total repeal of this provision would constitute a strong political signal and a major victory in the war against impunity.

Another regrettable aspect of the present situation consists of the interferences, acts of intimidation and threats against the courts committed by members of the police, the gendarmerie and the armed forces. These pressures are covered by the same impunity as acts committed by the security forces in Cambodia (including crimes of bloodshed). A study conducted by the partner organizations of the FIDH between January 1997 and October 1998 revealed that "at least 263 persons were executed by members of the police forces, the gendarmerie, the army, the militias, the protection services and public officials" during that period. According to information compiled by those organizations, none of the 209 suspects identified were brought before the courts. In addition, the FIDH deeply regrets that the police or the gendarmerie use excessive force when making arrests or in order to obtain confessions. Cases of torture are frequent: in 1999 LICADHO recorded 506 cases of torture of arrested suspects inflicted by police officers, gendarmes or members of the armed forces.

Cases of rape are not infrequent, and very often the perpetrators escape justice by paying a small sum of money to the families of the victims. Cases exist where girls between ages 3 and 6 have been raped and the families of the victims have been forced to resign themselves to refraining from pressing charges in exchange for sums of money ranging between US$ 15 and US$ 300. In addition, it frequently happens that the political or administrative authorities at all levels interfere with the police or the gendarmerie to have investigations directed along lines which suit them or to ensure that they yield no result. This situation sometimes leads individuals to conclude that the only means of defending their particular interests is to resort to violence; sometimes, too, the population decides to take the law into its own hands. Mob justice of this kind is developing in Cambodia to a disquieting degree.

Furthermore, the FIDH and its partner organizations consider that it is today essential, from both the domestic and international standpoints, that criminal liability for the atrocities committed by the Khmer Rouge be determined and that those who have been guilty of the most serious crimes be called to account. However, in view of the serious shortcomings in the functioning of the Cambodian judiciary, the FIDH considers that Cambodian justice is not in a position to take cognizance on its own of those crimes while ensuring due respect for the standards guaranteed by international instruments, and in particular the guarantees laid down in article 14 of the 1996 International Covenant on Civil and Political Rights. Even if one leaves out of account the problems of corruption and political interference, which could possibly be kept under control in the context of proceedings taking place under close international supervision, the Cambodian judiciary would have great difficulties with regard to competence and technical aspects; those difficulties are in fact and to a considerable extent consequences of the Khmer Rouge regime which is to be placed on trial. In such conditions a major international contribution is essential.

Cambodia has no intention of waiving that prerogative of sovereignty consisting of the right of a State to try its own criminals. That requirement must be respected; but it must also be made compatible with the requirement of justice expressed by the international community. The FIDH and its partner organizations consider that certain crimes are of too great a degree of magnitude and seriousness to be addressed solely within the framework of the State in which they were perpetrated and fall within the scope of an international obligation of repression. Thus if Cambodia were to take the initiative of adopting the legal provisions necessary to meet the legitimate demands of international law (including any constitutional changes which would facilitate that step) there would be no violation of national sovereignty, but simply the implementation of international law currently in force. Cambodia must be in a position to adopt specific rules guaranteeing a fair and impartial trial.

With the foregoing in mind, the FIDH requests the Commission to do all in its power to obtain the following:

1. That the trials can be held in Phnom Penh;

2. That the rules of procedure provide all the guarantees required in international law and be drawn up accordingly;

3. That Cambodian judges be closely associated with the proceedings. If the rules define precisely and transparently the different stages in the trial, there can be no objection to having a majority of Cambodian judges. Similarly, the president of the court may be of Cambodian nationality provided that, like the other judges, he has not, and never has had, any political attachments. All the members of the court should be appointed with the assistance of the United Nations;

4. It is absolutely essential that the prosecutor should be totally independent and a non-Cambodian national. In addition, the government authorities must allow him complete freedom of action and ensure that execution of his orders is not hindered in any way. It is also essential that the Cambodian Government should not intervene in the choice of the persons to be placed on trial;

5. No objection could be made to the appointment of an investigating magistrate, or a court of investigating magistrates, empowered to collect evidence in favour of as well as against the accused;

6. Finally, the necessary measures for the protection of both witnesses and members of the court during and after the trial proceedings must be adopted.

In conclusion, the FIDH, the ADHOC and the LICADHO consider that the organization of the trial of the Khmer Rouge is a priority, but that it should not divert attention from other priorities. The efforts made to bring those criminals to judgement should be paralleled by

adequate measures to restore the confidence of the Cambodian people in their national system of dispensation of justice. Association of the Cambodian judiciary with the trials of the Khmer Rouge in accordance with universally accepted criteria governing justice cannot fail to throw a positive light on the functioning and the credibility of the country's machinery of justice. Thus the court entrusted with the task of pronouncing judgements on the exactions committed by the Khmer Rouge could contribute to the restoration of the credibility of the judiciary in its entirety vis-à-vis the population.

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Promotion and Protection of Human Rights

Joint written statement* submitted by the International Federation of Human Rights Leagues and the World Organization against Torture, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 February 2000]

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* This written statement is issued, unedited, as received from the submitting non-governmental organizations.

As human rights defenders' activities have become more effective and have helped ensure greater protection for the victims of violations, the defenders themselves have increasingly come under attack in many States. In view of this, the World Organization against Torture and the International Federation of Human Rights Leagues, in conformity with a recommendation by their member organizations throughout the world, have decided to initiate an operational, reactive and flexible programme based on their combined experience and skills: the Observatory for the Protection of Human Rights Defenders.

The Observatory's policy rests on the belief that showing greater cooperation and solidarity towards harassed defenders and their organizations will help to break the isolation in which they are confined; and on the certainty that NGOs and the international community must respond systematically to the persecution of defenders.

Since it was set up in July 1997, the Observatory has gradually consolidated its capacity to protect defenders, by diversifying its activities and operations and by adapting them to situations in the field, through urgent appeals, notification of international bodies, international missions of inquiry and judicial observation, as well as legal defence and support, and strong mobilization of the media, intergovernmental organizations and public opinion.

The objective is twofold: to intervene in order to prevent or remedy specific individual or general cases of persecution; and to promote international mobilization in favour of defenders and the protection they require.

In its second annual report, published on 9 December 1999, the Observatory paints a terrible picture of the past year's events.

It is true that in the last 15 months the international community has shown some awareness of the degree of persecution to which human rights defenders are subjected, and of the need to establish international protection for their activities. This significant progress was confirmed when the United Nations General Assembly adopted its Declaration on Human Rights Defenders on 9 December 1998. In addition, various statements supporting victimized defenders were issued in 1999 by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, and by organs of the European Union and the Organization of American States, in particular the European Parliament and the Inter-American Commission on Human Rights.

Meanwhile, however, the measures and practices aimed at neutralizing defenders have diminished neither in intensity nor in number. Quite on the contrary, according to information gathered or received by the Observatory, defenders are more exposed than ever to repressive measures, to the extent that it appears from the behaviour of some States that fully-fledged strategies have been introduced both nationally and regionally to silence defenders.

Dozens of States tolerate, encourage or organize repressive actions against defenders, which come in a variety of forms and tend to be increasingly sophisticated. The variety of repressive techniques employed appears endless, ranging from summary execution to constant threats against defenders' children. Some 20 or so different techniques of this kind have already been identified by the Observatory.

The victims of this persecution are to be found in many walks of life and include not only militants of human rights associations, but also committed lawyers, judges concerned for their independence, the relatives of disappeared persons or imprisoned defenders, trade union militants, social workers, teachers, journalists and humanitarian staff. The only feature they have in common is that, in the eyes of the authorities they thwart, they have taken too close an interest in attacks on human dignity, or even more so that they have dared express their concern in public.

An increasing number of States have been concentrating their attacks not only on defenders individually, but also on their associations. Two trends have emerged in the past year. The first has been the proliferation of restrictive laws subjecting independent associations to drastic controls by the authorities, thereby reducing their room for manoeuvre. The second has been the development of pseudo-non-governmental organizations[1] created entirely by the authorities for the purpose of weakening and discrediting independent NGOs even among the international community. What is the distinguishing feature of these pseudo-NGOs? Never to make any public utterance in any way critical of their rulers or actually to turn into purveyors of government propaganda, which they often are to start with.

While, judging by the cases monitored over the last year, the main responsibility for attacks on defenders has lain with States and State officials, a fair amount of the blame may also be attributed to armed opposition groups, who consider human rights defenders as embarrassing witnesses of their misdeeds.

In many States, the spread of repressive measures and practices against defenders and the denigration of the activities of independent NGOs are part of a broader strategy serving the combined objectives of preserving a positive image of the country on the international scene at all costs and covering up domestic policy in breach of universal standards.

These same States are often found to be denigrating the universal character of human rights, stressing instead their relative worth in relation to so-called specificities of culture, religion or worship, or to be evading their responsibilities in the name of their state of underdevelopment - which in fact is more a drawback for their peoples than for their rulers.

This is the setting against which the 26 States, just as the General Assembly had adopted its Declaration on Human Rights Defenders, made their interpretative Declaration, in which they asserted the precedence of their domestic legislation over international principles. That was the first time a group of countries gave expression so openly to a policy which left no room for ambiguity, and which consisted in protecting States against the activities of human rights defenders and not defenders against arbitrary action by States.

That clear statement of purpose has been followed by the emergence of real regional strategies. Following the example of Asian countries, which have developed, against defenders amongst others, the use of so-called "national security" laws, some North African and

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[1] Nicknamed GONGOs (Government-organized NGOs) or RGOs (Really Governmental Organizations).

Middle-Eastern countries have finalized an Arab Convention on the Suppression of Terrorism, which projects on a regional scale the same broadly incriminating technique used by the States domestically. While the fight against terrorism is both legitimate and necessary, if conducted in conformity with international rules, the harmonization at a regional level of legal measures of intensified repression against human rights defenders must give rise to the greatest concern.

It has to be recognized that, far from declining, the persecution of human rights defenders has been spreading and appears to be taking root. To counter such a trend, declarations of good intentions and cosmetic fixes are not enough; the response must be global and must aim at "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want". The time has come to establish a specific mechanism to protect human rights defenders.

So far, the use of existing special procedures has served only to fill a gap in the international system for the protection of human rights, but its effect will necessarily be limited by the terms of the procedures, which by no means cover all the types of violations to which defenders are exposed. The protection afforded defenders by these procedures merely highlights the need to combine all such efforts, in order to ensure that the protection offered to defenders is not dispersed, random or conditioned by the particular category of violation to which they are exposed.

Furthermore, the establishment of a specific mechanism would relieve the burden of existing thematically and geographically-based procedures, which have to devote a significant proportion of their effort to cases of violations committed against human rights defenders.

The International Federation of Human Rights Leagues and the World Organization against Torture recall that several thousand NGOs appealed for the establishment of an international protection mechanism in the course of various demonstrations organized on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights (in particular the States General of Human Rights Defenders in Paris, Forum 98 in Geneva and Vienna + Five in Ottawa).

The International Federation of Human Rights Leagues and the World Organization against Torture therefore call on the United Nations Commission on Human Rights to establish a special procedure for the specific protection of human rights defenders, whose mandate will be not only to seek and receive information concerning acts preventing a person's enjoyment of the right, individually or with others, to promote the protection and realization of human rights and fundamental freedoms at national and international level, but also to react effectively with a view to protecting the persons concerned, as well as to examine the compatibility of national measures and practices with the provisions of the Declaration on Human Rights Defenders.

The World Organization against Torture, the International Federation of Human Rights Leagues and the Observatory call on the Commission to set up a department within the Office of the High Commissioner for Human Rights responsible for supporting the mechanism introduced in fulfilment of its mandate and assisting it to follow up the recommendations it makes to Governments.

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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 March 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Trafficking in Women and Children

1. Trafficking, the illegal and highly profitable transport and sale of human beings across or within international borders to exploit their labor, is a human rights abuse with global dimensions. Trafficking is a form of slavery. Women and children are lured, abducted or sold into forced labor, forced prostitution, domestic service, or involuntary marriage. They are subjected to rape, and sexual abuse by their traffickers and held as prisoners by their exploiters, made to work in slavery-like conditions, in debt bondage without pay and against their will. Recently, globalization, organized crime, and the Internet have led to an alarming increase in trafficking. Organized crime syndicates receive support from police and politicians through bribes.[i]

2. The Internet is the latest place for promoting global trafficking and sexual exploitation because there is little regulation.[ii] Agents offer catalogues of mail order brides with girls as young as thirteen. Commercial prostitution tours are advertised. These tours first appeared on the web in mid-1995 when Alan J. Munn, New York City, USA, launched PIMPS 'R' US. He arranged prostitution tours to the Dominican Republic and Nevada, USA. New technology has enabled an online merger of pornography and prostitution. The Internet reaches a prime group of potential buyers -men from western countries faster and less expensively than any other media. The oldest forum on the Internet for promoting sexual exploitation is the Newsgroup alt.sex.services (later renamed alt.sex.prostitution). Postings from the Newsgroup are archived into a World Wide Web site called The World Sex Guide which includes information and advice on where and how to find prostituted women and children in 110 countries. In August 1995, the category Yahoo: Business and Economy: Companies: Sex had 391 listings for live video conferencing, sex tours, escort services and mail order bride agencies. In August 1996, there were 1671 listings- a four fold increase in one year. In 1997, the online sex industry was estimated to be making US $1 billion a year, just in the U.S.[iii]

3. The following news stories concerning trafficking were recently reported in the local newspaper. Similar stories are reported daily in the U.S. and around the world. On January 14, 2000 a San Francisco newspaper reported that a wealthy Berkeley landlord Lakireddy Bali age 62, and his 30 year old son, Vijay Kumar Lakireddy, were arrested for smuggling three Indian teenage girls into the United States for sex and labor. Police began investigating after two of the girls suffered carbon monoxide poisoning in his apartment and one died. Lakireddy submitted fraudulent petitions to the Immigration and Naturalization Service saying the girls would be employed at his company. He faked a marriage with one girl. Prosecutors alleged that eight young women, potential witnesses who worked for Reddy in Berkeley had disappeared and might have been returned to India to avoid being interviewed by investigators. In October 1999, a Silicon Valley businessman was charged in a scheme to bring a 13-year old Vietnamese girl to the U.S. as a sex slave. Customs agents say Michael Rostoker agreed to pay the girl's family $150,000. Rostoker, president and chief executive of a San Jose electronics firm, has pleaded not guilty. The International Organization for Migration, a U.N. agency, estimates that from 1991 to 1998, 500,000 women from Ukraine alone were trafficked to the West for sexual exploitation. A recent investigation by local prosecutors found Mexican women were being shipped to Florida to sexually serve migrant workers. Thailand, Sri Lanka and the Philippines have become known as "sex tourist centers."[iv]

4. Despite numerous treaties[v] prohibiting trafficking they remain ineffectual due to weak mechanisms for monitoring implementation and a lack of coordination among the various U.N. bodies. Their capacity to provide effective protection and remedies to victims is compromised by conflicting domestic immigration and anti-prostitution laws which hold victims criminally liable and insufficient legislation incorporating extra territorial jurisdiction with extradition proceedings. Laws are also compromised by corrupt law enforcement and public officials who act as accomplices to traffickers. The enforcement provisions of the Trafficking and Slavery Conventions are weak because no independent supervisory body exists with authority to question States' reports, issue recommendations, or receive and act on petitions by victims alleging violations. CEDAW has been ineffectual because unfortunately, many states such as the U.S. have not ratified CEDAW. Although the Convention on the Rights of the Child (CRC) could reduce trafficking because of its nearly universal ratification, it remains ineffectual because its primary mechanism for monitoring implementation is the state reporting procedure. There is no Optional Protocol as under the ICCPR. The ICCPR has potential to curb trafficking because of its individual complaint mechanism within its First Optional Protocol, however, not many states have ratified the Optional Protocol.

5. HRA takes note with appreciation the work of the High Commissioner for Human Rights, Mary Robinson, who submitted a Note and the Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, who submitted a Position Paper at the June-July 1999 meeting of the AdHoc Committee on the Elaboration of a Convention against Transnational Organized Crime urging delegates to incorporate adequate human rights protections for trafficked persons as well as a broad definition of trafficking.[vi] HRA also commends the work of the Commission on the Status of Women particularly its major accomplishment of an Optional Protocol to CEDAW (which allows for no reservations) and which was adopted allowing women to file complaints specifically under the Convention.

Recommendations

6. HRA requests the Commission to call upon Governments to criminalize trafficking, penalize all offenders, including intermediaries, whether the offense was committed in their own or in a foreign country, confiscate criminal revenue, and penalize persons in authority found guilty of sexually assaulting victims in their custody. Governments should be encouraged to introduce legislation incorporating extra territorial jurisdiction with extradition procedures for trafficking-related offenses, and prohibiting the use of the Internet for trafficking women as brides and sex tourism and to pass or modify their immigration, asylum, anti-prostitution laws to protect victims.

7. HRA requests the Commission to urge the Ad Hoc Committee on the Elaboration of a Convention Against Organized Crime not to preclude the question of punishment in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, as without adequate punishment, the Protocol would be ineffectual.

8. HRA requests the Commission to encourage a comprehensive Convention on Trafficking to include all its modern manifestations i.e. slavery-like practices and the Internet, and meanwhile urge States to ratify CEDAW and the First Optional Protocol to the ICCPR so the individual complaint mechanism can be utilized to provide redress for victims.

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[i] Kristana Chaiyarat, Half of MP's Said Linked to Money Laundering, THE NATION, Nov.7, 1995, at A5, cited in 12 Geo. Immigr.L.J.145 (1997)

[ii] Donna M. Hughes, The Internet and the Global Prostitution Industry, Womenspace: Spring 99

[iii] San Francisco Chronicle, November 19, 1997

[iv] Harriet Chiang Berkeley Case Puts Focus on Sex Traffic Foreign women, girls sold to buyer in U.S., San Francisco Chronicle January 24, 2000

[v] Universal Declaration of Human Rights, the Slavery Convention of 1926, the 1956 Supplementary Convention on the Abolition of Slavery,1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the International Labor Organization's Forced Labor Convention (No. 29) and the 1957 Abolition of Forced Labor Convention (No. 105); the Convention on Elimination of All Forms of Discrimination Against Women Articles 2,6,and 18; the Convention on the Rights of the Child, Articles 24, 27-29, 31 and 32. The International Covenant on Civil and Political Rights, Articles 8(1), article 2. The International Covenant on Economic, Social, and Cultural Rights, Articles 7, 10(3),11,13

[vi] Document A/AC.254/16 on the June-July meeting web page.